



# LOUISVILLE & NASHVILLE RAILROAD COMPANY

908 W. BROADWAY • LOUISVILLE, KENTUCKY 40203 TELEPHONE (502) 587-5235

LAW DEPARTMENT

March 17, 1977

MAR 21 1977

DAVID M. YEARWOOD  
GENERAL ATTORNEY

Mr. Robert L. Oswald, Secretary  
Interstate Commerce Commission  
Washington, D. C. 20423

RECORDATION NO. 8753 Filed & Recorded

MAR 21 1977-9 30 AM

Dear Mr. Secretary:

There is transmitted to you herewith for filing and recordation, pursuant to Section 20c of the Interstate Commerce Act, three duly executed counterparts of a Trust Agreement dated as of July 1, 1961 between Monon Railroad, which was merged as of July 31, 1971 into the Louisville and Nashville Railroad Company, whose address is 908 West Broadway, Louisville, Kentucky 40201, and Continental Illinois National Bank and Trust Company of Chicago, as Trustee, whose address is 231 South LaSalle Street, Chicago, Illinois 60693.

That portion of the trust property constituting railroad rolling stock is set forth in the attached Appendix A.

There has been no prior recordation of any document relating to this transaction.

Attached hereto is a draft in the amount of \$50 payable to the Treasurer of the United States to cover the recordation fee for said Trust Agreement.

This letter of transmittal is signed by an officer of Louisville and Nashville Railroad Company designated for the purpose hereof who has knowledge of the matters set forth herein.

After recordation, please return a recorded counterpart of said Trust Agreement to:

*Paul Snyder*  
*Counterpart*

RECEIVED  
MAR 21 9 28 AM '77  
I.C.C. BR.  
FEE OPERATION BR.

Mr. David M. Yearwood  
General Attorney  
Louisville and Nashville Railroad Company  
908 West Broadway  
Louisville, Kentucky 40201

Respectfully yours,

Louisville and Nashville Railroad Company

By David M. Yearwood  
David M. Yearwood  
General Attorney

Attachments

APPENDIX A

<u>NUMBER OF UNITS</u>	<u>UNIT NUMBERS</u>	<u>DESCRIPTION</u>
6	L&N 1318-1323	2000 HP Alco C-420 Frt. Loco.
13	Monon 2000-2012	Box 70 Ton 50' 6"
5	Monon 2500-2504	Box 70 Ton 50' 6"
35	Monon 50000-50008, 50010, 50012-50013, 50015-50016, 50018- 50021, 50023-50039	Covered Hopper, 100-Ton
5	Monon 50009, 50011, 50014, 50017, 50022	Covered Hopper, 100-Ton
20	Monon 6051, 22832-22833, 22836-22841, 22843, 22845-22852, 22854- 22855	Auto Rack w/low Deck
1	Monon 22844	Auto Rack w/low Deck

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

3/21/77

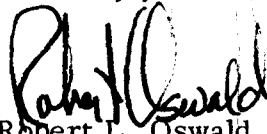
**OFFICE OF THE SECRETARY**

**Mr David M. Yearwood, Gen. Atty.  
Louisville & Nashville RR. Co.  
908 West Broadway  
Louisville, Kentucky 40201**

Dear Sir:

The enclosed document(s) was recorded pursuant to the  
provisions of Section 20(c) of the Interstate Commerce Act,  
49 U.S.C. 20(c), on 3/21/77 at 9:30am'  
and assigned recordation number(s) 8753 & 8753-A-Released:

Sincerely yours,

  
Robert L. Oswald  
Secretary

Enclosure(s)

SE-30  
(5/76)

EXECUTED IN 28 COUNTERPARTS  
No. 28

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MONON RAILROAD

AND

CONTINENTAL ILLINOIS NATIONAL BANK AND  
TRUST COMPANY OF CHICAGO,  
TRUSTEE

RECORDATION NO. 8753 Filed & Recorded

MAR 21 1977-9 30 AM

INTERSTATE COMMERCE COMMISSION

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## Trust Agreement

*Dated as of July 1, 1961*

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4¾% Guaranteed Trust Notes, due 1962-1976  
5% Guaranteed Trust Notes, due 1972-1976

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Guaranteed by the United States of America under Part V  
of the Interstate Commerce Act, as amended.

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**THIS AGREEMENT**, dated as of July 1, 1961, between MONON RAILROAD, an Indiana corporation (hereinafter called the Company), party of the first part, and CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association organized and existing under the laws of the United States of America (hereinafter called the Trustee), party of the second part,

**WITNESSETH :**

WHEREAS, the Company proposes to authorize, make and deliver \$3,500,000 aggregate principal amount of its 4¾% Guaranteed Trust Notes, due 1962-1976, and \$1,500,000 aggregate principal amount of its 5% Guaranteed Trust Notes, due 1972-1976 (hereinafter, together with the Consolidated Notes hereinafter referred to, being collectively called the Notes) and in order to provide for the authentication and delivery thereof by the Trustee and to establish the terms, covenants and conditions upon which the Notes are to be made, authenticated, delivered and received, the Company has duly authorized the execution of this Agreement; and

WHEREAS, from the proceeds of the sale of the Notes (other than the Consolidated Notes) the Company proposes to deposit with the Trustee the amount of \$4,000,000 as Deposited Cash in and to a trust fund hereunder, out of which Deposited Cash it is proposed that the Trustee acquire title to and pay the Construction Costs of certain Projects (as hereinafter defined); title to such Projects to be held by the Trustee and such Projects to be leased to the Company for a term of years, all as more fully provided herein; and

WHEREAS, the Notes and the certificates of authentication of the Trustee thereon are to be in substantially the forms set forth in Schedule I hereto with such insertions or omissions as are provided for herein; and

WHEREAS, the Company has filed with the Interstate Commerce Commission applications for a guaranty of the Notes and for authority to make and deliver the Notes and to issue and pledge the bonds hereinafter referred to as security for the Notes; and

WHEREAS, the Company represents that all acts and things necessary to make the Notes, when made and delivered by the Company and authenticated and delivered by the Trustee as provided in this Agreement, the valid, binding and legal obligations of the Company and to make this Agreement valid and binding on the Company, have been, or prior to the authentication of any Notes hereunder will have been, done and performed;

Now, THEREFORE:

In order to secure the payment of the principal of and interest on all of the Notes outstanding or to be outstanding under this Agreement and to secure the performance of all of the covenants and conditions upon which the Notes are made and delivered and authenticated and, in consideration of the premises, of the acceptance of the Notes by the holders thereof and of the sum of \$10 duly paid to the Company by the Trustee, the receipt of which is hereby acknowledged, the Company does hereby sell, assign, transfer and set over to, and does pledge and hypothecate with, the Trustee and its successors in the trust under this Agreement, and its and their assigns, (1) \$332,000 aggregate principal amount of the Company's First Mortgage, Contingent 4% Income Bonds, Series B, due January 1, 1983, (2) \$137,000 aggregate principal amount of the Company's First Mortgage 4% Income Bonds, Series A, due January 1, 1983, (3) \$184,600 aggregate principal amount of the Company's Second Mortgage 4½% Income Bonds, Series A, due January 1, 2003, and (4) all other property of every type and description from time to time hereafter by delivery or by writing of any kind sold, pledged, assigned, conveyed or transferred to the Trustee (including all property included or to be included in the Projects in respect of which Deposited Cash is paid out by the Trustee), which hereby is authorized to receive any property so sold, pledged, assigned, conveyed or transferred at any and all times as and for additional security for the payment of the Notes to be authenticated hereunder.

To HAVE AND TO HOLD said bonds and any other property sold, pledged, assigned, conveyed or transferred as aforesaid unto the Trustee, its successors in the trust, and its and their assigns forever, IN TRUST, nevertheless, for the equal and ratable use and benefit of all present and future holders of the Notes made and to be made under and secured by this Agreement, and for the enforcement of the payment of

the principal of and interest on the Notes when payable, and the performance of and compliance with the covenants and conditions of this Agreement, without preference, priority or distinction as to lien or otherwise of one Note over any other Note, so that each and every Note made and to be made and authenticated as aforesaid shall have equal and proportionate right, lien and privilege under this Agreement, and so that, subject to the terms hereof, the principal of and interest on every such Note shall be equally and ratably secured hereby as if all such Notes at any time outstanding had been made, executed, delivered and negotiated simultaneously with the execution and delivery of this Agreement, all subject, however, to the provisions of Article Three of this Agreement.

PROVIDED, HOWEVER, and subject to the provisions of Article Ten hereof, that if the Company shall pay in full the principal of and interest on all of the Notes and pay all other sums payable hereunder by the Company and perform all other actions required of it hereby, this Agreement shall cease to be of further effect, and the right, title and interest of the Trustee in and to the Trust Property (as hereinafter defined) and any other property held hereunder shall vest in the Company free and clear of any rights of the Trustee or of the holders of the Notes under this Agreement.

AND IT IS HEREBY COVENANTED AND DECLARED that all such Notes are to be made, delivered, authenticated and received and that the security hereunder is to be held by the Trustee upon and subject to the following covenants, conditions, uses and trusts; and it is agreed and covenanted by the Company with the Trustee and the respective holders from time to time of Notes hereby secured as follows:

## ARTICLE ONE

### DEFINITIONS

SECTION 1.1. The following terms (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agreement and of any agreement supplemental hereto shall have the respective meanings specified below:

“Act” shall mean Part V of the Interstate Commerce Act, as amended.



*"Additions and Betterments or Other Capital Expenditures"* shall have the meaning of the phrase "additions and betterments or other capital expenditures" as used in Section 502(b) of the Act.

*"Agreement"* shall mean this Trust Agreement, as amended or supplemented from time to time.

*"Closing Date"* shall mean the date ascertained in accordance with Section 4 of the Purchase Agreements.

*"Commission"* shall mean the Interstate Commerce Commission or any successor thereto in the administration of the Act.

*"Company"* shall mean Monon Railroad and, subject to the provisions of Article Nine hereof, shall include its successors and assigns.

*"Consolidated Notes"* shall mean, collectively, the 4¾% Consolidated Note and the 5% Consolidated Note; and *"4¾% Consolidated Note"* and *"5% Consolidated Note"* shall mean, respectively, the 4¾% Consolidated Note and the 5% Consolidated Note referred to in Article Three hereof.

*"Construction Costs"* shall mean, with reference to any portion of the Projects, such costs, expenses and other amounts incurred in respect of the Projects subsequent to January 1, 1961, as shall be certified to the Trustee in the manner provided for in Section 4.3 hereof, and shall be chargeable to the road, property and equipment investment accounts of the Company in accordance with the Uniform System of Accounts prescribed by the Commission for Class I Railroad Companies, and shall include, without limitation, all costs chargeable to such Accounts (i) incurred in the acquisition of all physical properties, easements and other rights included in the Projects and (ii) arising out of reimbursement to the Company for services rendered for the account of the trust created by this Agreement in planning, constructing and acquiring the Projects.

*"Contingent Income Bonds"* shall mean the Company's First Mortgage, Contingent 4% Income Bonds, Series B, due January 1, 1983, issued under and secured by the First Mortgage.

*"Deposited Cash"* shall mean the aggregate of (a) cash deposited with the Trustee as provided in Section 2.1 hereof and, when required or indicated by the context, any Government Securities purchased by the use of such cash pursuant to the provisions of Section 8.1(e) hereof, and (b) any cash sums restored or paid to the Deposited Cash from payments by the Company pursuant to Section 8.1(e) hereof and on deposit with the Trustee.

*"Event of Default"* shall mean any Event of Default specified in Section 7.1 hereof.

*"First Mortgage"* shall mean the Company's Indenture of Mortgage and Deed of Trust dated as of January 1, 1943, with The First National Bank of Chicago, Trustee, as now or hereafter amended and supplemented.

*"Guaranty Agreement"* shall mean a Guaranty Agreement as the same shall be executed and deposited with the Trustee pursuant to Section 2.1 hereof.

*"Government Securities"* shall mean bonds, notes or other direct obligations of the United States of America, obligations for which the full faith of the United States is pledged to provide for the payment of the interest and principal or obligations of a governmental agency fully guaranteed by the United States of America.

The *"holder"* of any Note shall mean the payee named therein until a transferee, or successive transferee, of such Note shall have presented the same to the Trustee for inspection and shall have given to the Trustee written notice executed in the manner required by Section 11.5(a) hereof of the acquisition of such Note and of an address for the purposes of Section 11.8 hereof and thereafter shall mean such transferee, or such successive transferee.

*"Investors"* shall mean the parties, other than the Company, to the Purchase Agreements.

*"Louisville Project"* shall mean the Company's projected construction of barge unloading facilities and railroad-car loading facilities in the area of Louisville, Kentucky, as more fully set forth in the Company's application, as amended and supplemented, to the Commission in Finance Docket No. 21551.

*"Michigan City Project"* shall mean the Company's projected construction of rail-marine terminal facilities at the Company's northern terminus at Michigan City, Indiana, as more fully set forth in the Company's application, as amended and supplemented, to the Commission in Finance Docket No. 21551.

*"Notes"* shall mean, collectively, the 4¾% Notes and the 5% Notes; *"4¾% Notes"* shall mean, collectively, the 4¾% Guaranteed Trust Notes due 1962-1976 and *"5% Notes"* shall mean, collectively,

the 5% Guaranteed Trust Notes due 1972-1976 of the Company, respectively, outstanding or to be outstanding hereunder which have been or which are to be made and delivered by the Company and authenticated by the Trustee pursuant to Article Two hereof; *provided, however*, that after the Payment on Guarantee in respect thereof "*4¾% Notes*" and "*5% Notes*" shall mean and include only the respective Consolidated Notes authenticated by the Trustee pursuant to Article Three hereof and shall not include any of the Notes theretofore authenticated by the Trustee under Article Two hereof.

"*Officers' Certificate*" shall mean a certificate signed by the President or a Vice President and by the Treasurer or an Assistant Treasurer of the Company.

"*Opinion of Counsel*" shall mean a written opinion of counsel (who, except with respect to action to be taken in case of a default or for the purposes of Section 8.1(h) hereof, may be counsel for the Company) acceptable to the Trustee.

The term "*outstanding*", when used with reference to Notes, shall mean, as of any particular time, all Notes theretofore authenticated and delivered by the Trustee hereunder except (i) Notes theretofore canceled by the Trustee or surrendered to the Trustee for cancelation, (ii) Notes matured as to which funds sufficient for the payment thereof have been deposited with and are held by the Trustee, (iii) Notes in lieu of or in substitution for which other Notes shall have been delivered and authenticated pursuant to Section 2.5 hereof, and (iv) all Notes other than the Consolidated Notes, after the Payment on Guarantee.

"*Payment on Guarantee*" shall mean payment in cash by the United States of America to the Trustee in full of the purchase price provided in the Guaranty Agreement following a demand made by the Trustee in accordance with the provisions thereof and delivery to the Commission in connection therewith of the Consolidated Notes authenticated pursuant to Article Three hereof.

"*Pledged Bonds*" shall mean the Contingent Income Bonds, the Second Mortgage Bonds and the Series A Bonds pledged with the Trustee pursuant to Section 2.1 hereof and any bonds that may be substituted therefor hereunder pursuant to Section 6.4 hereof.

"*Projects*" shall mean, collectively, the Louisville Project and the Michigan City Project.

*“Purchase Agreements”* shall mean the several Purchase Agreements dated March 28, 1961, and June 15, 1961, as to the 4¾% Notes and the 5% Notes, respectively, in substantially the forms attached as Schedule II hereto, to be entered into between the Company and the Investors providing for the purchase from the Company of Notes in the aggregate principal amount of \$5,000,000, as the same shall be executed and deposited with the Trustee pursuant to Section 2.1 hereof.

*“Request”* shall mean a written request for the action therein specified, duly executed on behalf of the Company by the President or a Vice President of the Company.

*“Second Mortgage Bonds”* shall mean the Company’s Second Mortgage 4½% Income Bonds, Series A, due January 1, 2003, issued under and secured by the Company’s Second Mortgage dated January 1, 1943, with Chicago Title and Trust Company, Trustee, as now or hereafter amended and supplemented.

*“Series A Bonds”* shall mean the Company’s First Mortgage 4% Income Bonds, Series A, due January 1, 1983, issued under and secured by the First Mortgage.

*“Trustee”* shall mean Continental Illinois National Bank and Trust Company of Chicago and, subject to the provisions of Article Eight hereof, shall include its successors in trust hereunder.

*“Trust Property”* shall mean the Deposited Cash, the Pledged Bonds, any other property sold, pledged, assigned, conveyed, deposited or transferred as security with the Trustee and any other moneys or other property (including properties forming a part of the Projects) received by the Trustee to be held as part of the trust estate.

## ARTICLE TWO

### THE NOTES

SECTION 2.1. After the execution of this Agreement and the deposit with the Trustee of (i) Consolidated Notes conforming with the provisions of Section 3.1 hereof, (ii) a copy of the Guaranty Agreement executed by the Trustee and by the United States of America acting by and through the Commission and (iii) an executed copy, in duplicate, of each of the Purchase Agreements, \$3,500,000 aggregate prin-

principal amount of 4¾% Notes and \$1,500,000 aggregate principal amount of 5% Notes may be made and delivered by the Company to the Trustee for authentication and the Trustee, subject to the provisions of Section 2.2 hereof, shall upon Request authenticate and deliver said Notes to or upon the order of the Company on the Closing Date but only upon the prior receipt by the Trustee of (A) an executed copy, in duplicate, of each of the certificates and the opinions of counsel required to be delivered as a condition to the obligation of each Investor to purchase Notes on the Closing Date by the provisions of Section 5 of the Purchase Agreements, (B) (i) \$332,000 in aggregate principal amount of Contingent Income Bonds, (ii) \$137,000 in aggregate principal amount of Series A Bonds and (iii) \$184,600 in aggregate principal amount of Second Mortgage Bonds, each in bearer form or registered in the name of the Trustee or its nominee as registered owner as the Trustee shall request, and each accompanied by a letter of pledge thereof to the Trustee in the form annexed hereto as Schedule III, signed by the President or any Vice President of the Company, and (C) from the proceeds of the sale of the Notes and as more fully provided in Section 4.1 hereof, the amount of \$4,000,000 in Deposited Cash.

SECTION 2.2 (a). 4¾% Notes made and delivered to the Trustee by the Company and authenticated and delivered by the Trustee pursuant to Section 2.1 hereof shall (i) not be prepayable by the Company, (ii) be in substantially the form set forth in Part (a)(i) of Schedule I hereto, (iii) be dated the date of authentication by the Trustee which shall be the Closing Date, (iv) bear interest at the rate or rates in Section 2.3 hereof provided, (v) subject to Section 2.5 hereof, be limited to \$3,500,000 in aggregate principal amount, and (vi) mature in the aggregate principal amount of \$100,000 annually on July 1 in each of the years 1962 through 1966, inclusive; in the aggregate principal amount of \$200,000 annually on July 1 in each of the years 1967 through 1971, inclusive; and in the aggregate principal amount of \$400,000 annually on July 1 in each of the years 1972 through 1976, inclusive.

(b). 5% Notes so made, authenticated and delivered shall (i) not be prepayable by the Company, (ii) be in substantially the form set forth in Part (a)(ii) of Schedule I hereto, (iii) be dated the date of authentication by the Trustee which shall be the Closing Date, (iv) bear interest at the rate or rates in Section 2.3 hereof provided, (v)

subject to Section 2.5 hereof, be limited to \$1,500,000 in aggregate principal amount, and (vi) mature in the aggregate principal amount of \$300,000 annually on July 1 in each of the years 1972 through 1976, inclusive.

SECTION 2.3. Interest on the Notes shall be computed on the basis of a 360-day year of twelve 30-day months and shall be payable semi-annually on July 1 and January 1 of each year commencing January 1, 1962, and shall be at the rate of (i)  $4\frac{3}{4}\%$ , in the case of the  $4\frac{3}{4}\%$  Notes and (ii) 5%, in the case of the 5% Notes, per annum until the principal shall have become due and payable. If the Company shall default in the payment of the principal of any Note after the same shall have become due and payable, interest shall be payable at the rate of 6% per annum on such Note from the date it shall have become due and payable until paid.

SECTION 2.4. At the expense of the Company and at the request of the holder of any Note and upon the surrender of such Note at any time for cancelation at the principal office of the Trustee (accompanied by a duly executed instrument of transfer and funds for the payment of transfer taxes, if any, if a request is made for a new Note or Notes of the same series payable to a person or persons other than the payee named in the surrendered Note), the Company shall make and deliver to the Trustee and the Trustee shall authenticate and deliver to such holder a new Note or Notes in the appropriate form set forth in Part (a) of Schedule I in exchange therefor in aggregate principal amount equal to the unpaid principal amount of the Note surrendered, dated the date to which interest has been paid on such surrendered Note, or, if such exchange takes place prior to the date on which interest is first paid on the Notes, dated the Closing Date, payable to the order of such person or persons, in such denomination or denominations as such holder may request and having the same maturity or maturities as such surrendered Note; *provided, however*, that each such new Note shall be in the denomination of the Note surrendered or \$5,000 or a multiple thereof, except that, upon any such surrender in exchange for more than one new Note, one such new Note shall be in the denomination of the amount, if any, by which the principal amount of the surrendered Note exceeds the largest multiple of \$5,000 included in said principal amount.

SECTION 2.5. Upon (a) receipt by the Company of evidence satisfactory to it of the loss, theft or destruction of any Note and of indemnity in form and amount satisfactory to it and to the Trustee or (b) surrender for cancelation of any mutilated Note, and, in each case, upon the reimbursement to the Company of all reasonable expenses incidental thereto, the Company will make and deliver to the Trustee and the Trustee will authenticate a new Note of like tenor in lieu of such Note. Any Note made, delivered and authenticated in accordance with this Section 2.5 shall be dated the date to which interest has been paid on the Note in lieu of which it is delivered, or, if made and delivered by the Company and authenticated by the Trustee pursuant to this Section 2.5 prior to the date on which interest is first paid on the Notes, dated the Closing Date.

SECTION 2.6. Each Note shall be signed on behalf of the Company by its President or any Vice President and the certificate of authentication thereon shall be executed by the Trustee by one of its authorized officers. No Note shall be valid or become obligatory for any purpose until the certificate of authentication thereon shall have been so executed by the Trustee as herein provided.

SECTION 2.7. The Trustee may deem and treat the payee of any Note as the absolute owner thereof for the purpose of payments thereon and notices with respect thereto and for all purposes, except to the extent set forth in Section 11.5 hereof with respect to the Notes made and delivered on the Closing Date.

SECTION 2.8. (a) Payment of interest on each Note (other than interest payable on the date of maturity thereof) shall be made by the Trustee by mailing its check to the holder thereof at the address of such holder for purposes of notice pursuant to Section 11.8 hereof. Payment of the principal of any Note at maturity thereof and interest due thereon shall be made by the Trustee upon surrender of such Note at the principal office of the Trustee for cancelation. The Trustee's obligation to make any payment with respect to the Notes is conditioned upon its prior receipt of funds for that purpose from the Company or the Payment on Guarantee.

(b) Prior to each date on which any payment of principal of or interest on the Notes is due and payable in accordance with the provisions of this Agreement and the Notes, the Company covenants and

agrees that it shall deposit with the Trustee as provided in Section 4.4 hereof an amount in cash sufficient for the payment thereof. The Trustee shall hold any funds so deposited with it as part of the Trust Property hereunder and apply such funds to the payment of principal of and interest on the Notes as the same shall become due and payable in accordance with the provisions of this Agreement and the Notes, to the extent that such funds are sufficient therefor. If such funds deposited with the Trustee are not sufficient to pay all amounts due and payable on the Notes on any date, or if the Company shall have failed to pay any other amounts required to be paid by the Company pursuant to Section 4.4 hereof, such funds shall be held by the Trustee as part of the trust estate and applied as provided in Section 7.9 hereof.

SECTION 2.9. All Notes surrendered to the Trustee for cancellation at maturity or otherwise shall be canceled by the Trustee and such canceled Notes shall then be delivered to the Company.

### ARTICLE THREE

#### THE CONSOLIDATED NOTES

SECTION 3.1. Prior to the first making and delivery of Notes to the Trustee for authentication in accordance with the provisions of Section 2.1 hereof, the Company shall make and deliver to the Trustee (i) a 4¾% Consolidated Note conforming with Part (b)(i) of Schedule I hereto and (ii) a 5% Consolidated Note conforming with Part (b)(ii) of Schedule I hereto. Such Consolidated Notes shall each be payable to the United States of America, but shall be undated and the total principal amount thereof and the dates and amounts of the instalment payments shall be left blank. From time to time if and as required by the Trustee for the purpose of replacing a mutilated, lost, stolen, destroyed, defaced or incorrectly completed Consolidated Note (including any prepared for delivery to the Commission but not delivered) previously delivered to the Trustee, the Company shall make and deliver to the Trustee a substitute Consolidated Note of like tenor, complying in all respects with the provisions of this Section 3.1 and in such event the Consolidated Note which such substitute Consolidated Note shall replace shall become null and void and of no force and effect.

SECTION 3.2. The Trustee shall hold the Consolidated Notes for completion of the dates and principal amounts thereof and the dates and



amounts of the instalment payments and for authentication and delivery thereof to Commission in accordance with the provisions of the Guaranty Agreement and of this Article Three, and not otherwise. The Consolidated Notes shall not be or become valid or obligatory for any purpose, or be secured hereby or be entitled to any lien, right or benefit hereunder, until certificates of authentication substantially in the forms set forth in Part (b) of Schedule I hereto for the Consolidated Notes shall have been executed thereon by the Trustee and the purchase price provided in the Guaranty Agreement shall have been paid to the Trustee in full in cash following delivery of the Consolidated Notes to the Commission in accordance with the Guaranty Agreement.

SECTION 3.3. If the Trustee shall become entitled to make demand pursuant to the Guaranty Agreement upon the Commission for the purchase by the United States of America from the Trustee, for the benefit of the holders of Notes outstanding under this Agreement, of all of the rights, interests, powers, privileges and remedies of said holders hereunder evidenced by said Notes, the Trustee shall promptly give written notice that it has become so entitled to the holders of such Notes. Unless the holders of all of the Notes outstanding hereunder shall have directed the Trustee in writing to refrain from making such demand within ten days after the giving of the aforesaid notice to such holders, the Trustee covenants and agrees, and the payee and each subsequent holder of each Note does likewise covenant and agree as a condition of the acceptance thereof, that the Trustee shall promptly after the expiration of such ten-day period complete the Consolidated Notes by dating each of the same the last day to which interest has been paid on the Notes, by filling in respective principal amounts (i) in the 4¾% Consolidated Note, equal to the then aggregate unpaid principal balance of the outstanding 4¾% Notes and (ii), in the 5% Consolidated Note, equal to the then aggregate unpaid principal balance of the outstanding 5% Notes, each respectively payable in instalments on the dates and in the amounts payable, respectively, on such 4¾% Notes and such 5% Notes, and by executing the certificates of authentication thereon, and shall thereupon make demand in writing upon the Commission pursuant to paragraph 1 of the Guaranty Agreement for the purchase by the United States of America from the Trustee of all of the rights, interests, powers, privileges and remedies hereunder evidenced by all said Notes and at the time of making such demand deliver to the Commission the Con-

solidated Notes in lieu of and in substitution for all Notes then outstanding hereunder. In the event that on a July 1 or January 1 preceding the date on which the demand under the Guaranty Agreement is made by the Trustee there shall have been deposited with the Trustee and applied to the payment of interest on the Notes due on said date some amount less than all of the interest due and payable on the Notes on said date, such payment shall be deemed to have been applied to the payment of daily interest on the Notes as it accrued and interest on the Notes shall be deemed to have been paid to the last day on which interest so accrued shall have been so paid by the application of any such payment. The Trustee shall pay all stamp and other taxes, if any, which may be payable or may be determined to be payable or the payment of which may be demanded by the United States of America, in respect of the transfer of the Consolidated Notes to the United States of America pursuant hereto and to the Guaranty Agreement, and the Trustee shall be reimbursed by the Company or from the Trust Property as provided in Section 7.9(a) for any such payment.

SECTION 3.4. Upon the authentication and delivery to the Commission of the Consolidated Notes in accordance with the provisions of Section 3.3 hereof and the Payment on Guarantee, the Trustee covenants and agrees, and the payee and each subsequent holder of each Note does likewise covenant and agree as a condition of the acceptance thereof, that (i) without further action by the Trustee, the Commission or any other person, all of the Notes shall thereupon cease to evidence any obligation of the Company whatsoever under this Agreement or any right of any kind in the security provided hereby but they shall evidence only the right to receive upon surrender thereof at the principal office of the Trustee a share of the purchase price paid to the Trustee pursuant to Section 3.5 hereof equal to the unpaid balance of each Note together with interest accrued thereon to the date of Payment on Guarantee, and (ii) the Consolidated Notes shall thereupon and thereafter evidence the indebtedness represented by said Notes immediately prior to the Payment on Guarantee and all of the rights, interests, powers, privileges and remedies evidenced by said Notes hereunder immediately prior to the Payment on Guarantee.

SECTION 3.5. Upon receipt of payment of the purchase price specified in paragraph 2 of the Guaranty Agreement the Trustee shall forthwith give notice of such receipt to all holders of Notes outstanding

immediately prior to the Payment on Guarantee and to the Company. Such purchase price shall be held by the Trustee in trust for the benefit of the holders of the Notes outstanding hereunder immediately prior to the Payment on Guarantee and applied to the payment to the holder of each such Note outstanding hereunder immediately prior to the Payment on Guarantee of an amount equal to the then unpaid balance of the principal thereof together with interest accrued thereon to the date of Payment on Guarantee upon the surrender of such Note at the principal office of the Trustee.

SECTION 3.6. If the United States of America shall default in making payment pursuant to the Guaranty Agreement for a period of 180 days after demand by the Trustee in accordance therewith, the Trustee may, and upon written request of the holders of at least a majority in aggregate principal amount of the Notes then outstanding and upon receiving a reasonable indemnity as provided in Section 8.1(b) hereof against all costs, expenses and liabilities to be incurred shall, proceed by suit or suits at law or in equity, as the Trustee may be advised by counsel, to recover judgment against the United States of America upon the Guaranty Agreement and to take such steps as may be required to collect or enforce said judgment to the fullest extent permitted by law. Anything in this Agreement to the contrary notwithstanding, however, the holders of at least a majority in aggregate principal amount of the Notes outstanding from time to time shall have the right to direct and control the action of the Trustee in any proceedings under this Section 3.6.

SECTION 3.7. No holder of any Note shall have the right to institute any suit, action or proceeding for the enforcement of the Guaranty Agreement unless the holders of at least a majority in aggregate principal amount of the Notes outstanding shall have made written request upon the Trustee to enforce the Guaranty Agreement and unless, also, one or more of the holders of Notes shall have offered to the Trustee reasonable indemnity as provided in Section 8.1(b) hereof against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee for 60 days after its receipt of such notice, request and offer of indemnity, shall have neglected or refused to act; *provided, however*, that no holder of any Note shall have the right to exercise any remedy hereinabove referred to which might result in the termi-

nation of the Guaranty Agreement without the consent of all of the other holders of Notes.

## ARTICLE FOUR

### THE PROJECTS; RELEASE OF DEPOSITED CASH

SECTION 4.1. The Trustee shall hold the Deposited Cash as part of the Trust Property and shall, as more fully provided in this Article Four, apply the Deposited Cash for the purpose of paying directly, or reimbursing the Company for, Construction Costs incurred in connection with the planning, acquisition, construction and installation of the Projects.

SECTION 4.2. The Company, as speedily as may be, shall cause the Projects to be constructed, installed and completed for the account of the trust created by this Agreement and shall cause all properties, easements, rights and franchises forming a part of the Projects to be transferred and set over directly to the Trustee to be held by the Trustee as part of the Trust Property.

SECTION 4.3. From time to time the Company may deliver to the Trustee a Request with respect to the payment of Deposited Cash dated within ten days prior to the date of the requested payment; *provided, however*, that no such Request (other than the last Request filed pursuant to this Section 4.3) shall pertain to an amount in Deposited Cash less than \$100,000. The Trustee shall pay to or upon the order of the Company (as directed in such Request) from Deposited Cash the amount specified in such Request, *provided* that:

(a) the Trustee shall have received:

(1) prior to the first Request with respect to the payment of Deposited Cash:

(i) completion bonds, issued by a bonding company or companies, acceptable to the Trustee, in respective amounts not less than \$2,250,000, in the case of the Louisville Project, and not less than \$1,750,000, in the case of the Michigan City Project, conditioned in each case upon

the construction and completion of and payment for the appropriate Project in accordance with the Company's application, as amended and supplemented, and the Order of the Commission, in Finance Docket No. 21551, within the time specified in said Order;

(ii) an indemnity bond issued by a bonding company or companies, acceptable to the Trustee, in an amount not less than \$1,000,000, indemnifying the Trustee against any loss arising out of or in connection with any claim, lien or encumbrance by one or more suppliers, contractors, or workmen with respect to supplies or labor furnished in connection with the construction and completion of the Projects;

(iii) an Opinion of Counsel to the effect that this Agreement has been filed, registered and/or recorded wherever and however necessary to protect the interests of the Trustee in and to the Trust Property to the fullest extent contemplated by the laws of the jurisdictions wherein the Trust Property is or is to be located; and

(iv) the Company shall have executed and delivered to the Trustee all instruments and agreements which the Trustee may require as may be necessary or proper to constitute Earl W. Lueders (or any other person named by the Trustee) an additional and separate trustee hereunder pursuant to the provisions of Section 8.6 hereof with respect to all or any of the Trust Property, and the Commission shall have approved such appointment; and

(2) in connection with each Request with respect to the payment of Deposited Cash:

(i) an Officers' Certificate, dated as of a date within 90 days of the date of such Request, (A) listing, describing and specifying in detail the Construction Costs in respect of which payment is requested, stating that Deposited Cash has not theretofore been paid out on the basis of such Construction Costs and stating as to each

item of such Construction Costs the aggregate dollar amount attributable thereto, (B) listing, as to each item of such Construction Costs, the names and addresses of the contractors, manufacturers, distributors, dealers or other persons to whom such amounts have been paid by the Company for the account of the trust created by this Agreement or are due and payable (which list shall be accompanied by invoices or receipts for such amounts from the persons to whom paid or payable addressed to the Trustee, not individually but as Trustee hereunder), (C) stating that as to each item of property included in such Construction Costs, such property has been transferred to and is held by the Trustee free and clear of any claims, liens or encumbrances as part of the Trust Property hereunder, and (D) stating that (1) the aggregate amount of Construction Costs referred to in said Certificate and (2) the payment to or upon the order of the Company from Deposited Cash of the portion of the amount specified in such Request attributable as set forth in such Certificate, have been approved by the Commission (which approvals shall be indicated to the Trustee by the signature of the Secretary of the Commission or the Director or the Assistant Director of the Commission's Bureau of Finance appearing at the foot of such Certificate);

(ii) a deed or deeds of all real property or properties included in the Construction Costs in respect of which payment is requested, from the prior owner or owners thereof to the Trustee, not individually but as Trustee hereunder together with a certificate or certificates of title insurance, acceptable to the Trustee, covering such real property in an amount equal to \$2,250,000, in the case of the Louisville Project, and in the amount of \$1,750,000, in the case of the Michigan City Project, or, if title insurance in such amounts shall not be obtainable, such lesser amounts as may be acceptable to the Trustee, but in any event not less than the Construction Costs in respect of

the Louisville Project or the Michigan City Project, as the case may be, in respect of which payment out of Deposited Cash is then being and has theretofore been requested;

(iii) a bill or bills of sale of all personal property or properties included in the Construction Costs in respect of which payment is requested, from the manufacturer or manufacturers or prior owner or owners thereof to the Trustee, not individually but as Trustee hereunder unless, in the case of any item of personal property costing less than \$5,000, the Request states that it is not customary to furnish a bill of sale in respect thereto; and

(iv) an Opinion of Counsel to the effect that (A) title to all property or properties included in the Construction Costs in respect of which payment is requested has been vested in the Trustee free and clear of all claims, liens and encumbrances (other than this Agreement), and, in the case of each item of real property, to the effect that the deed thereof to the Trustee is duly recorded wherever required or necessary to protect the interests of the Trustee therein; (B) no further filing, registration or recordation of or in respect of this Agreement is necessary to protect the interests of the Trustee in and to such property or properties to the fullest extent contemplated by applicable law, or if any such filing, registration or recordation is necessary, specifying the same and stating that it has been done; and (C) all conditions precedent provided for in this Agreement in respect of the requested payment have been complied with and the Trustee is authorized to make such payment under the provisions of this Agreement;

(b) with respect to any item of Construction Costs specified in an Officers' Certificate furnished pursuant to subparagraph (a) of this Section 4.3 as being due and payable, such amounts shall be paid directly by the Trustee to the payee thereof, it being understood and agreed that payment of Construction Costs incurred in connection with either the acquisition of any item of property

having a cost of \$5,000 or more or of any item of real property shall be made in each case by the Trustee directly to the transferor or vendor thereof; and

(c) each of the Officers' Certificates delivered to the Trustee pursuant to subparagraph (a) of this Section 4.3 shall state that the Construction Costs referred to in such Certificate are attributable to Additions and Betterments or Other Capital Expenditures; and the dollar amounts released by the Trustee from Deposited Cash pursuant hereto shall not at any time, in the aggregate, exceed the sum of \$4,000,000.

SECTION 4.4. The Trustee does hereby let and lease to the Company, for a term of years commencing on the date of authentication by the Trustee of the Notes hereunder and terminating on July 1, 1976, all the properties constituting the Projects, together with all appurtenances, additions and betterments thereto. The Company hereby accepts the lease of all such properties, and covenants and agrees (A) to pay to the Trustee, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, rent hereunder which shall be sufficient to pay and discharge the principal of and interest on the Notes, when and as the same shall become payable, whether upon the respective stated dates of maturity thereof or otherwise under the provisions thereof or of this Agreement, and as specified in Section 2.8 hereof (which amounts shall be applied by the Trustee as specified in Section 2.8 hereof) and (B) to pay to the Trustee (or, in the case of taxes, to the proper taxing authority) additional rent hereunder in such coin or currency in amounts which shall be sufficient to pay and discharge the following items, when and as the same shall become due and payable:

(a) all the necessary and reasonable expenses of the trust hereby created, including compensation of the Trustee and all expenses of the Trustee hereunder; and

(b) any and all taxes, assessments and governmental charges upon or on account of the income and/or property of the trust, or of this Agreement, which the Trustee as such may be required to pay.

For the purposes of this Section 4.4, the term "Trustee" shall be deemed to include an additional trustee appointed pursuant to Section 8.6 hereof.



SECTION 4.5. The Company agrees that it will maintain and keep all the properties constituting the Projects in good order and proper repair at its own cost and expense.

SECTION 4.6. The Company, so long as an Event of Default hereunder has not occurred and is continuing, shall be entitled to the quiet possession and enjoyment of the Projects leased to it hereunder. The Trustee shall release to or upon the order of the Company title to such properties forming a part of the Projects as the Commission, upon Request so to do by the Company in form and substance satisfactory to the Commission, may, in its discretion, authorize and approve, such authorization and approval to be indicated in writing to the Trustee signed by the Secretary of the Commission or by the Director or the Assistant Director of the Commission's Bureau of Finance.

SECTION 4.7. The Company covenants and agrees to indemnify and hold harmless the Trustee against any and all claims arising out of or connected with the ownership or use of the Projects or any part thereof, including, without limitation, any and all claims arising out of or connected with the ownership or use of any patented inventions in and about the Projects, and to comply in all respects with the laws of the United States of America and of all the states in which the Projects or any part thereof may be located, and with all lawful acts, rules, regulations and orders of the Commission and of all other commissions, boards and other legislative, executive, administrative or judicial bodies or officers having power to regulate or supervise the Projects or any part thereof. The Company shall not be relieved from any of its obligations under this Agreement by reason of the assertion or enforcement of any such claims or the commencement or prosecution of any litigation in respect thereof.

SECTION 4.8. The Company shall not, without the written consent of the Trustee and the Commission first had and obtained, assign or transfer any of its rights under this Agreement, or sublet the Projects or any part thereof; and the Company shall not without such written consents, part with the possession of, or suffer or allow to pass out of its possession or control, the Projects or any part thereof.

## ARTICLE FIVE

## CERTAIN AGREEMENTS OF THE COMPANY

SECTION 5.1. The Company will duly and punctually pay or cause to be paid the principal of and interest on each of the Notes at the place, at the respective times and in the manner provided in the Notes and it shall not prepay any of the Notes or, directly or indirectly, purchase or cause to be purchased any Note.

SECTION 5.2. The Company agrees that all notices and demands to or upon the Company in respect of the Notes and of this Agreement may be served at the principal office of the Trustee. The Trustee agrees to forward all such notices and demands to the Company.

SECTION 5.3. The Company will not do or suffer any matter or thing whereby the Trust Property might be lost or impaired and will take all necessary action so that the title of the Trustee to or the lien of this Agreement on the Trust Property shall be duly preserved.

SECTION 5.4. At any and all times, the Company will do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered by any other corporation or person obligated to the Company so to do, all or any such further acts, transfers and assignments as the Trustee shall reasonably require for the better assuring, assigning and confirming unto the Trustee the Trust Property held under this Agreement, or intended so to be, or as may be required to carry out the intent of this Agreement, or to provide for the payment of the Notes, according to the intent and purpose herein expressed. The Company will record, file, rerecord and refile this Agreement wherever and whenever required in order to protect the interests of the Trustee in and to the Trust Property.

SECTION 5.5. The Company covenants and agrees that, unless the written consent of the Commission is first obtained, the Company (a) will not make any declaration or payment of dividends or other distribution of its property or assets on or in respect of any class or kind of its capital stock, whether pursuant to or in connection with a reduction of capital or otherwise, after July 1, 1961, unless (i) at the date of

any such proposed declaration, payment or distribution, and after giving effect thereto, the total amount of the current assets of the Company exceeds the total amount of its current liabilities by \$1,260,000 or by an amount equal to the total of its railway operating expenses for the full calendar month immediately preceding the date of any such declaration, payment, or distribution for which figures are available, whichever is greater, and (ii) the aggregate amount of the Company's net income for the periods beginning with July 1, 1961, and ending with a date not more than 90 days prior to the date of such declaration, payment or other distribution less the aggregate amount of the deficits in net income of the Company, if any, for such periods shall exceed the aggregate amount of all such payments or other distributions made by the Company after July 1, 1961, including the proposed declaration, payment or distribution, (b) will not itself, and will not permit any subsidiary to, purchase or acquire, redeem or retire, directly or indirectly, or enter into or perform any agreement, commitment, or other obligation of any kind or nature whatsoever to purchase or acquire, redeem or retire, directly or indirectly, or under any contingency, any shares of any capital stock of any class of the Company or of any subsidiary, other than pursuant to existing contracts entered into by the Company prior to the date hereof, and (c) will not make any investment, or obligate itself to make any investment, in (A) any securities other than (i) its own bonds and obligations (other than the Notes) and (ii) direct obligations of the United States or (B) other property of any kind or nature whatsoever other than property to be used in the operation, development, or improvement of the Company's business as a common carrier by railroad or in activities directly related thereto. As used herein the terms "current assets", "current liabilities", "railway operating expenses", "net income", and "deficits in net income" shall be determined in accordance with the Commission's Uniform System of Accounts for Class I Railroad Companies.

SECTION 5.6. The Company will abide by and comply with all of the conditions contained in the order and the supplemental order of the Commission in Finance Docket No. 21551, and the covenants contained in the Company's agreement with the Commission required thereby.

SECTION 5.7. The Company will pay, or reimburse the Trustee for the payment of, all stamp and other taxes, if any, including interest

and penalties, which may be payable by the Trustee in respect of the making and delivery by the Company of the Notes (including the authentication thereof by the Trustee), the Purchase Agreements and this Agreement, or the modification, amendment or alteration of the terms and provisions of any thereof, and the Trustee shall be reimbursed by the Company or from the Trust Property as provided in Section 7.9(a) hereof for any such payment.

## ARTICLE SIX

### THE PLEDGED BONDS

SECTION 6.1. The Pledged Bonds shall be in bearer form or registered in the name of the Trustee or its nominee as registered owner, and shall be in such authorized denominations, as the Trustee shall request. The Pledged Bonds shall be held by and in the custody of the Trustee under the terms and provisions of this Agreement. The Trustee shall have and, subject to the provisions of Section 7.15 hereof, may exercise, full voting rights with respect to the Pledged Bonds including the right to consent to or vote on any amendment or supplement to any of the mortgages under which the Pledged Bonds are issued. To the extent permitted by the respective mortgages under which the Pledged Bonds are issued, the Trustee is hereby authorized in its discretion to cause Pledged Bonds registered in the name of the Trustee or its nominee to be exchanged into bearer form, and to cause Pledged Bonds in bearer form to be registered in its name as such Trustee or in the name of its nominee, and the Trustee may make such other transfers and arrangements as may be required in its discretion from time to time to protect the lien intended to be created hereby upon such Pledged Bonds.

SECTION 6.2. Unless and until an Event of Default shall have occurred and be continuing, the Company shall not be required to pay any interest on the Pledged Bonds or any of them and shall be entitled to receive for its own use all interest, if any, paid on the Pledged Bonds, and if the Trustee shall receive any such interest it shall forthwith deliver and pay such interest to the Company. The Trustee from time to time shall execute and deliver suitable assignments and orders for the payment of such interest, if any, in favor of the Company and shall

deliver to the Company any coupons, if any such are held by the Trustee, representing interest on Pledged Bonds, as they mature. If an Event of Default has occurred the Trustee shall, during the continuance thereof, be entitled to collect and receive all interest on the Pledged Bonds. Any interest and payments so received shall be held by the Trustee as Trust Property and applied in conformity with the provisions of this Agreement.

SECTION 6.3. Irrespective of whether an Event of Default shall have occurred or be continuing, the Company shall not be entitled to receive, and the Trustee shall not pay over or deliver to the Company, any moneys or property paid or received on account of the principal of any Pledged Bonds. In case any moneys or property shall be paid or received on account of the principal of the Pledged Bonds, all such moneys or property shall be collected and received by the Trustee, and any moneys and property so received by the Trustee shall be held as Trust Property and applied in conformity with the provisions of this Agreement.

SECTION 6.4. Unless and until an Event of Default shall have occurred and be continuing, the Company shall have the right, on Request, dated within ten days of the date specified for the substitution requested, to pledge in substitution for any Pledged Bonds other bonds which are direct obligations of the Company; *provided, however*, that such other bonds (a) shall be in a principal amount not less than the aggregate principal amount of Pledged Bonds for which they are substituted, (b) shall be secured by the same, or equivalent, or prior lien upon substantially all the property pledged and mortgaged on the date of this Agreement under the respective mortgages under which such Pledged Bonds are outstanding, including any property hereafter subjected to the lien of such mortgages, but excluding any property released from the lien thereof pursuant to the provisions thereof, (c) shall mature not later than the Pledged Bonds for which they are substituted and (d) shall bear the same or a higher rate of interest; *provided, further*, that prior to such substitution the Trustee shall have received an Opinion of Counsel covering the matters specified in the preceding subclauses (b), (c) and (d) and to the further effect that all conditions precedent to such substitution have been complied with. All Pledged Bonds for which other bonds are substituted

shall be delivered by the Trustee to the Company and the bonds so to be pledged in substitution shall forthwith be pledged hereunder in the same manner as the Pledged Bonds for which they are substituted.

## ARTICLE SEVEN

### REMEDIES ON DEFAULT

SECTION 7.1. In case of the happening of one or more of the following Events of Default:

(a) if default shall be made in the payment of the principal of or interest on any of the Notes, or the rentals payable in respect thereof under Section 4.4 (A) hereof when the same shall become due and payable, either by the terms of the Notes, or otherwise; or

(b) if default shall be made in the due observance or performance of any other covenant or condition in this Agreement required to be kept or performed by the Company, and such default shall continue for 90 days after written notice specifying such default shall have been given to the Company by the Trustee, which notice, subject to Section 7.15 hereof, may be given by the Trustee in its discretion, and shall be given upon the receipt of the written request of the holders of not less than 10% in aggregate principal amount of the Notes then outstanding or at the written request of the Commission; or

(c) if, by decree of a court of competent jurisdiction, the Company shall be adjudicated a bankrupt, or an order shall be made approving a petition filed other than by the Company seeking reorganization or readjustment of the Company under the Federal Bankruptcy Laws or other similar law or statute of the United States of America or of any state thereof, or, by order of such court entered otherwise than upon petition filed by, consented to or acquiesced in by the Company, a trustee in bankruptcy or reorganization or a receiver shall be appointed of all or substantially all of the property of the Company, and any such decree or order shall have continued unstayed on appeal or otherwise and in effect for a period of 60 days; or

(d) if the Company shall file a petition in bankruptcy, or shall consent to or acquiesce in the appointment of a trustee in bankruptcy or reorganization or a receiver of all or any part of its property, or shall file a petition seeking reorganization or readjustment of the Company under the Federal Bankruptcy Laws or other similar law or statute of the United States of America or of any state thereof, or shall file an answer admitting the material allegations of any such petition filed by creditors, or shall file a petition to take advantage of any debtor's act; or

(e) if an "Event of Default", as such term is defined in any mortgage securing any of the Pledged Bonds, shall occur and be continuing and shall not have been waived in accordance with the provisions of such mortgage, or if any default of a nature substantially similar to such an "Event of Default" shall occur under any mortgage securing bonds pledged hereunder in substitution for Pledged Bonds and shall be continuing and shall not have been waived;

then and in each and every such case, unless the principal of all the Notes shall have already become due and payable, subject to Section 7.15 hereof, the Trustee by notice in writing delivered to the Company may, and, upon the written request of the holders of at least a majority in aggregate principal amount of the Notes at such time outstanding, shall, declare the principal of all Notes then outstanding hereunder to be, and upon any such declaration the same shall become and shall be, immediately due and payable.

This provision, however, is subject to the condition that if at any time after the principal of the Notes shall have been so declared due and payable but before any sale of the Trust Property or any thereof shall have been made pursuant to the provisions hereof, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, all arrears of interest upon all the Notes and the reasonable charges and expenses of the Trustee, its agents and attorneys, shall be paid by the Company or be provided for by the deposit with the Trustee of a sum sufficient to pay the same or be received by the Trustee under Sections 6.2 or 6.3 hereof, and any and all defaults hereunder, other than the non-payment of principal (except such principal, if any, then due and payable in accordance with the stated maturity expressed in any Note)

shall have been remedied, then and in every such case, subject to Section 7.15 hereof, the holders of at least a majority in aggregate principal amount of the Notes then outstanding, by written notice to the Company and to the Trustee, may waive all such prior defaults and their consequences and rescind and annul such declaration; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent default, or shall impair any right consequent thereon.

In case the Trustee shall have proceeded to enforce any right under this Agreement and proceedings shall have been discontinued or abandoned because of such waiver or for any other reason, or shall have been determined adversely to the Trustee, then and in every such case the Company and the Trustee shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Trustee shall continue as though no such proceeding had been taken.

SECTION 7.2. In case of the happening of any Event of Default, the Trustee, subject to Section 7.15 hereof, may by its agents enter upon the premises of the Company where any of the Trust Property may be and take possession of all or any part of the Trust Property and withdraw the same from said premises, retaining all payments which up to that time may have been made on account of rental for the Trust Property and otherwise, and may lease or otherwise contract for the use of the Trust Property or any part thereof, or with or without retaking possession thereof may sell the same or any part thereof, free from any and all claims of the Company, in one lot and as an entirety or in separate lots, in so far as may be necessary to perform and fulfill the trust hereunder, at public or private sale, for cash or upon credit, in its discretion, and may proceed otherwise to enforce its rights in the manner herein provided. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at the place of sale the Trust Property to be sold, and in general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale.

SECTION 7.3. Upon the occurrence and during the continuance of any Event of Default, subject to Section 7.15 hereof, the Trustee in its discretion, instead of exercising the power of sale and lease hereinabove conferred upon it, may, and upon the written request of the holders of at



least a majority in aggregate principal amount of the Notes then outstanding and upon receiving reasonable indemnity, as provided in Section 8.1 (b) hereof, against all costs, expenses and liabilities to be incurred, shall, proceed, by suit or suits at law or in equity, as the Trustee may be advised by counsel, to enforce the payment of the Notes, and to foreclose this Agreement, and to sell or lease the Trust Property, under the judgment or decree of a court or courts of competent jurisdiction.

Subject to Section 7.15 hereof, the Trustee in its discretion from time to time also may, and upon being requested and indemnified as hereinbefore in this Article Seven mentioned shall, proceed to protect and to enforce any of the rights of the Trustee or of the holders of Notes under this Agreement by a suit or suits at law or in equity for the specific performance of any covenant or agreement on the part of the Company contained herein, or for the enforcement of any other appropriate remedy, as the Trustee, being advised by counsel, may deem most effective for the purpose.

Subject to Section 7.15 hereof, the holders of a majority in principal amount of the Notes from time to time shall have the right to direct and control the action of the Trustee in any proceeding except where such action by the Trustee might result in the release of the United States of America from its obligations under the Guaranty Agreement in which event such right to direct and control the action of the Trustee shall be exercised only by the holders of all of the Notes at the time outstanding.

SECTION 7.4. Subject to any mandatory requirements of law, notice of any sale at public auction, whether under or by virtue of the power of sale herein conferred, or under or by virtue of any judgment or decree of foreclosure and sale or any other judicial proceedings, shall state the time when and the place where the same is to be made, and shall contain a brief general description of the property to be sold, and shall be sufficiently given if published at least once a week for four consecutive weeks prior to such sale in a newspaper printed in the English language and customarily published at least once a day for at least five days in each calendar week in the city where the sale is to be made. A copy of any such notice of sale shall be furnished by the Trustee to the Company at the time of the first publication thereof.

SECTION 7.5. Upon the completion of any sale or sales under this Agreement, the Trustee shall assign or transfer and shall deliver to the purchaser or purchasers such of the Trust Property as shall have been sold to such purchaser or purchasers, and such assignment or transfer and such delivery shall be conclusive evidence of the validity of the transfer thereby effected. The Trustee and its successors as trustee hereunder hereby are irrevocably appointed the true and lawful attorney or attorneys of the Company, in its name and stead, to make all necessary assignments and transfers and deliveries of the property thus sold; and for that purpose it and they may execute all necessary acts of assignment and transfer and delivery and may substitute one or more persons with like power; the Company hereby ratifying and confirming all that its said attorney or attorneys or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, if so requested by the Trustee, the Company shall ratify and confirm such sale or sales by executing and delivering to such purchaser or purchasers all proper instruments of transfer as may be designated in such request.

SECTION 7.6. The receipt of the Trustee for the purchase money shall be a sufficient discharge therefor to any purchaser of the property or any part thereof sold as aforesaid; and no such purchaser or his representatives, grantees or assigns, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this Agreement, or shall in any manner whatsoever be answerable for any loss, misapplication or non-application of any such purchase money or any part thereof, or shall be bound to inquire as to the authorization, necessity or expediency of any such sale or sales.

SECTION 7.7. In case of any sale or lease, whether made under the power of sale or lease in this Article Seven granted or pursuant to judicial proceedings, the whole of the principal sums of the Notes hereby secured, if not previously due, shall at once become due and payable, anything in said Notes or in the Guaranty Agreement or in this Agreement to the contrary notwithstanding.

SECTION 7.8. Any sale or lease made under or by virtue of this Article Seven whether under the power of sale or lease herein granted or pursuant to judicial proceedings, shall operate to divest all right,

title, interest, claim and demand, either at law or in equity, of the Company, in and to the property sold or leased, and shall be a perpetual bar both at law and in equity against the Company, its successors and assigns, and against any and all persons claiming the property sold or any part thereof, from, through or under the Company or its successors or assigns; and no payments theretofore made by the Company for the rent or use of the Projects or either of them shall give to the Company any legal or equitable interest or title in or to the Projects or either of them or any cause or right of action at law or in equity in respect of the Projects against the Trustee or the holders of the Notes.

SECTION 7.9. The purchase money, proceeds or avails of any such sale or lease, whether under the power of sale or lease hereby granted or pursuant to judicial proceedings, together with any moneys held by the Trustee as part of the trust estate, shall be applied in the order indicated as follows:

(a) to the payment of the costs, expenses, fees and other charges of such sale or sales or lease or leases, and of reasonable compensation to the Trustee, its agents, attorneys and counsel under this Agreement, and of all expenses, liabilities and advances made or incurred by the Trustee under this Agreement, and to the payment of all taxes, assessments, or other governmental charges required to be paid upon or in respect of the Trust Property or the income thereof, except any such taxes, assessments or charges subject to which such sales shall have been made;

(b) to the payment of the whole amount then owing and unpaid upon the outstanding Notes hereby secured for both principal and interest with interest on principal after the same shall have become due and payable at the rate of 6% per annum; or in case such moneys shall be insufficient to pay in full the whole amount so due and unpaid upon the Notes, first to the payment of interest due and payable on the Notes, without preference or priority of any instalment of interest over any other instalment of interest, and then to the payment, ratably, of the unpaid principal of the Notes; and

(c) to the payment of any surplus then remaining to the Company, its successors or assigns, or to whosoever shall be lawfully entitled to receive the same.

Any payments made by the Trustee pursuant to the provisions of sub-

paragraph (b) of this Section 7.9 shall be made on the date fixed therefor by the Trustee, upon presentation of the several Notes and stamping thereon the amount paid if such Notes be only partly paid, and upon surrender thereof if fully paid.

SECTION 7.10. In case of any sale hereunder, any purchaser, for the purpose of making settlement or payment for the property purchased, shall be entitled to use and apply any Notes hereby secured by presenting such Notes in order that there may be credited, as paid thereon, the sums payable out of the net proceeds of such sale to the holder of such Notes as his ratable share of such net proceeds, after the deduction of costs, expenses, compensations and other charges; and there shall be credited to such purchaser, on account of the purchase price payable by him, so much of the sums payable out of such net proceeds as shall be applicable to the payment of and as shall have been credited upon the Notes so presented; and, at any such sale, any holder of Notes or the Trustee may bid for, and purchase, such property, and may make payment therefor as aforesaid, and, upon compliance with the terms of sale, may hold, retain and dispose of such property without further accountability therefor.

SECTION 7.11. The Company covenants that in case default shall be made in the payment of the principal of or interest on any Note or Notes outstanding under this Agreement when the same shall have become payable, whether upon maturity of said Notes or otherwise, then the Trustee, subject to Section 7.15 hereof, may demand and the Company will pay to the Trustee, for the benefit of the holders of the outstanding Notes, the whole amount that then shall have become due and payable on all such Notes for principal or interest, or both, as the case may be, with interest upon the overdue principal at the rate of 6% per annum; and, in addition thereto, such further amount as shall be sufficient to defray the costs and expenses of collection, including reasonable compensation to the Trustee, its agents, attorneys and counsel, and any expenses or liabilities incurred by the Trustee hereunder.

In case the Company shall fail forthwith to pay such amounts upon such demand, the Trustee, in its own name and as trustee of an express trust, is, subject to Section 7.15 hereof, entitled and empowered to, and, subject to Section 7.15 hereof, upon the written request of the holders of at least a majority in aggregate principal amount of the Notes at such time outstanding, and upon being furnished with reasonable indem-

nity as provided in Section 8.1(b) hereof against all costs, expenses and liabilities to be incurred, shall, institute such actions or proceedings, **at law or in equity**, as the Trustee may be advised by counsel are appropriate for the collection of the sum so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Company and collect in the manner provided by law out of the property of the Company wherever situated the moneys adjudged or decreed to be payable.

The Trustee shall be entitled to recover judgment as aforesaid, either before or after or during the pendency of any proceedings for the enforcement of the remedies under this Agreement or the lien provided hereby in respect of the Trust Property, and its right to recover such judgment shall not be affected by any sale or lease hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this Agreement; and, in case of a sale of the Trust Property, or any part thereof, and of the application of the proceeds of sale to the payment of the indebtedness represented by the Notes, the Trustee, in its own name and as trustee of an express trust, shall be entitled to receive and to enforce payment of any and all deficiencies or amounts then remaining due and unpaid for principal and interest as aforesaid upon any and all of the Notes then outstanding, for the benefit of the holders thereof, and shall be entitled to recover judgment for any portion of such indebtedness remaining unpaid, with interest. No recovery of any judgment by the Trustee and no levy of any execution under any such judgment upon the Trust Property, or any part thereof, or upon any other property, shall in any manner or to any extent affect or impair the lien of the Trustee upon the Trust Property, or any part thereof, or upon any other property, or any rights, powers or remedies of the Trustee hereunder, or any rights, powers or remedies of the holders of the Notes, but such lien, rights, powers and remedies shall continue unaffected and unimpaired as before.

Any moneys collected by the Trustee, together with any moneys then held by the Trustee as part of the trust estate shall be applied, at the date or dates fixed by the Trustee for the distribution of such moneys, in the order provided in Section 7.9 hereof.

**SECTION 7.12.** All rights of action and rights to assert claims under this Agreement, or under any of the Notes, may be enforced by the Trustee without the possession of any of the Notes or the production

thereof on any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee.

SECTION 7.13. No delay or omission of the Trustee or of any holder of any of the Notes to exercise any right or power accruing upon any default as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Article Seven to the Trustee or to the holders of Notes may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the holders of the Notes.

SECTION 7.14. No holder of any Note issued hereunder shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Agreement, or for the execution of any trust hereof, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless (a) such holder previously shall have given to the Trustee written notice of default and of the continuance thereof, as hereinbefore provided, (b) the holders of at least a majority in aggregate principal amount of the Notes then outstanding shall have made written request upon the Trustee to act hereunder, and (c) one or more of the holders of the Notes shall have offered to the Trustee reasonable indemnity as provided in Section 8.1 (b) hereof against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee for 60 days after its receipt of such notice, request and offer of indemnity, shall have neglected or refused to act; and such notification, request and offer of indemnity are hereby declared, in every such case, to be conditions precedent to the execution by any holder of Notes of the powers and trusts of this Agreement, and to any action or cause of action for any remedy hereunder; it being understood and intended, and being expressly covenanted by the taker and holder of every Note issued hereunder with every other taker and holder and the Trustee, that no one or more holders of Notes shall have any right in any manner whatever by virtue of or by availing of any provisions of this Agreement to affect, disturb or prejudice the rights of the holders of any other of the Notes, or to obtain or seek to obtain priority over or preference to any other such holder, or to disturb the lien of this Agreement, or to enforce any right under this Agreement,

except in the manner herein provided, and that all such proceedings at law or in equity shall be had for the equal, ratable and common benefit of all holders of outstanding Notes; *provided, however*, that no holder of any Note shall have the right to exercise any remedy hereinabove referred to which might result in the termination of the Guaranty Agreement without the written consent of all other holders of Notes then outstanding.

Nothing contained in this Agreement or in the Notes shall alter or impair the obligation of the Company, which is unconditional and absolute, to pay the principal of and interest on the Notes as therein promised.

SECTION 7.15 (a). The Trustee has covenanted and agreed with the Commission in the Guaranty Agreement, and does hereby covenant and agree with the payee and each subsequent holder of each Note, that without the prior written consent of the Commission it shall not (i) make or consent to any alteration (including, without limitation, any extension of the time of payment of principal or interest, it being understood that a failure to take action to compel payment when due shall not be considered such an extension of time) in the terms of this Agreement or the Notes, except to evidence the succession of another corporation to the Company, or successive successors, and the assumption by the successor corporation of the obligations of the Company pursuant to Article Nine hereof, (ii) make or consent to any release from this Agreement of, or any substitution or exchange in or modification of, any Trust Property subject hereto, or sell, assign, pledge or transfer any of the rights and interests in the Trust Property held under this Agreement, except for (A) the payment of Deposited Cash as specifically provided for in Article Four hereof, (B) the payment of interest to the Company pursuant to Section 6.2 hereof, (C) the substitution of Pledged Bonds pursuant to Section 6.4 hereof, (D) the transfer to a successor trustee pursuant to Article Eight hereof, and (E) the investment of moneys and the payment over to the Company of any moneys to which the Company is entitled pursuant to Section 8.1(e) hereof, (iii) accelerate the maturity of the principal payments to be made under this Agreement and the Notes (except as provided in subparagraph (b) of this Section 7.15), (iv) exercise or enforce against the Company any right, power or remedy given by this Agreement as a consequence of any default by the Company in performance of its

agreements contained herein or the Notes (except as provided in subparagraph (b) of this Section 7.15), or (v) waive any claim against the Company under or in connection with this Agreement or the Notes; *provided, however*, that the agreements of the Trustee hereinabove in this Section 7.15(a) and in the Guaranty Agreement set forth shall not restrict the Trustee in the exercise of its rights against the United States of America under the Guaranty Agreement and pursuant to Article Three of this Agreement for the benefit of holders of Notes or prohibit the execution by the Trustee of an appropriate supplemental agreement pursuant to subparagraph (a) of Section 11.1 hereof. Any purported action or attempt to take any action forbidden by this Section 7.15(a) shall be void and of no force and effect, and the rights, powers, duties and liabilities of the Company, the Trustee, the holders of Notes, the United States of America and any other person shall not be affected in any manner by any such purported action or attempt. The United States of America, acting for itself or by and through the Commission, shall have the right to bring an action or actions (i) to enjoin the Trustee from any action forbidden by this Section 7.15(a) and (ii) to compel performance by the Trustee of the covenants on its part contained in the Guaranty Agreement, and the Trustee hereby waives any defense based upon the adequacy of a remedy at law to any such action or actions which may be so brought.

(b) If the Trustee shall have made demand on the Commission pursuant to the Guaranty Agreement accompanied by delivery of the Consolidated Notes, the Commission, for the period of 180 days thereafter and notwithstanding that the Payment on Guarantee shall not have been made, shall have and may exercise all of the rights given to the holders of all of the Notes by this Article Seven to direct and control the action of the Trustee in exercising the rights and remedies herein provided for the enforcement of the provisions hereof upon the occurrence of an Event of Default, subject, however, to compliance by the Commission with any conditions to the exercise of any thereof specified herein to be complied with by the holders of the Notes; *provided, however*, that if the Trustee shall have made demand, accompanied by delivery of the Consolidated Notes, upon the Commission in accordance with Guaranty Agreement for payment of the purchase prices provided therein and if payment of such purchase prices in full shall not have been made for any reason within the period of 180 days commencing on the date that such demand and delivery shall have been made, the Trustee may, and,



upon the written request of the holders of at least a majority in aggregate principal amount of the Notes at such time outstanding, shall, without obtaining the consent of the Commission, accelerate the maturity of the principal of all the Notes under this Agreement and exercise or enforce any of such rights and remedies. Any moneys realized during such period as a result of the exercise of such rights and remedies shall nonetheless be applied as provided in Section 7.9 hereof.

## ARTICLE EIGHT

### CONCERNING THE TRUSTEE

SECTION 8.1. The Trustee accepts the trust hereby created upon the following terms and conditions, to all of which the Company and the holders of the Notes at any time outstanding, by their acceptance thereof, agree:

(a) The Trustee assumes no responsibility for the correctness of the recitals contained herein or in the Notes, the Guaranty Agreement or the application by the Company to the Commission for guaranty against loss of principal or interest on the Notes under the Act (other than those recitals referring to the Trustee) and assumes no responsibility for the validity of or the security provided by this Agreement, the Trust Property, the Notes (except as to its executed certificate of authentication on any thereof) or the Guaranty Agreement.

(b) The Trustee may execute any of the trusts under this Agreement or exercise any of the powers hereby vested in the Trustee or perform any duty hereunder or under the Guaranty Agreement either itself or by or through its attorneys or agents, and the Trustee shall not be answerable or accountable for any act, default, neglect or misconduct of any such attorneys or agents provided reasonable care has been exercised in the selection thereof, nor shall the Trustee be otherwise answerable or accountable, except for its own individual negligence or bad faith or non-compliance with the express requirements of this Agreement. The Trustee shall not be under any obligation or duty to institute, appear in or

defend any suit in respect hereof or in respect of the Guaranty Agreement unless first reasonably indemnified.

(c) The Trustee shall be protected with respect to any action taken, suffered, or omitted by it in reliance upon any notice, resolution, request, waiver, consent, order, certificate, statement, affidavit, indemnity bond, report, appraisal, opinion, telegram, cablegram, radiogram, letter, bond or other paper, document, or instrument believed by it to be genuine and to be signed, sent or presented by the proper parties. Any of such documents required by any of the provisions of this Agreement or under the Guaranty Agreement as a condition of any action by the Trustee may be received by the Trustee as conclusive evidence of any statement or opinion therein contained and shall be full warrant, authority and protection to the Trustee acting on the faith thereof not only in respect of the statements therein made but also in respect of the opinions therein set forth. The Trustee may employ such counsel, accountants, appraisers, engineers or other experts as it may reasonably deem desirable, and any action taken, suffered or omitted by the Trustee hereunder or under the Guaranty Agreement in good faith and in accordance with the advice of any such expert shall be conclusive upon the Company and upon all of the holders of the Notes.

(d) The Company covenants and agrees to pay to the Trustee from time to time on demand of the Trustee reasonable compensation (which shall not be limited by any provision of law with respect to the compensation of fiduciaries or of the trustee of an express trust) for all services rendered by the Trustee hereunder or under the Guaranty Agreement and also all reasonable expenses and counsel fees, fees of other experts and other disbursements and those of its attorneys, agents and employees incurred in and by the administration and execution of the trusts hereby created and exercise of powers and the performance of duties hereunder or under the Guaranty Agreement. In default of payment by the Company, the Trustee shall have a right against the Trust Property therefor and the proceeds thereof, prior to the interests of the Notes issued hereunder.

(e) The Trustee shall not be liable for interest on any moneys paid to it under this Agreement during the period such moneys shall remain on deposit with it, except such interest as the Trustee may agree with the Company to pay; *provided, however*, that the Trustee, on Request, shall invest all or any part of such moneys (other than moneys held in trust for the payment of principal of or interest on particular Notes) in Government Securities maturing not more than one year after their acquisition, but the Trustee shall not be required to make any such investment after it has canceled and discharged the lien of this Agreement in accordance with Article Ten hereof. The Company shall promptly pay the Trustee for any premium (over principal amount and accrued interest) to be paid upon the purchase of any such Government Securities pursuant to the foregoing provisions, and for any expenses incurred by it in connection with the purchase or sale thereof, including accrued interest and brokerage commissions. Any transactions in Government Securities made by the Trustee pursuant to this Agreement may be consummated through the Trustee's own Bond Department.

Unless an Event of Default shall have occurred and be continuing, any interest on such Government Securities which may be received by the Trustee shall be paid to the Company at the end of the calendar month in which such interest may have been received; *provided, however*, that if at the end of such calendar month the aggregate market value of any such Government Securities shall be less than their cost, the Trustee shall, out of any such interest collected by it and not theretofore paid over to the Company, retain an amount sufficient to make up such deficit so long as such deficit shall exist. Such Government Securities and retained interest shall be held by the Trustee as part of the trust estate, but, on Request, or at any time when the Trustee in its discretion shall deem such action advisable, the Trustee shall sell all or any designated part of the same, and the proceeds of such sale and retained interest shall be held by the Trustee as part of the trust estate. In case the net proceeds realized upon any sale, together with any interest held with respect thereto, shall amount to less than the cost of the Government Securities so sold, the Trustee shall not be liable therefor and the Company shall promptly pay to the Trustee the

amount of the difference between the cost and the net proceeds and interest held with respect thereto and the amount so paid shall be held by the Trustee as part of the trust estate. The Company, unless an Event of Default shall have occurred and be continuing, shall be entitled to receive any amount realized from the sale of the Government Securities so sold in excess of the cost thereof. The term "cost" for the purpose of making any computation pursuant to the provisions of this subparagraph (e), shall not be deemed to include the amount of any premium (over principal amount), accrued interest and brokerage commissions paid upon the purchase of any Government Securities hereunder.

(f) The Trustee or any company in or with which the Trustee may be interested or affiliated, or any officer or director or trustee or stockholder of the Trustee or of any such company, may acquire and hold Notes, or may engage in or be interested in any financial or other transaction with the Company or any corporation in which the Company may be interested, and the Trustee may act as depository, trustee, transfer agent, registrar or agent for the Company or for any committee or other body, firm or corporation in respect of any bonds, notes or other securities, whether or not issued pursuant hereto.

(g) Any action at any time taken by the Trustee pursuant to or with respect to this Agreement or under the Guaranty Agreement at the request or with the consent or approval (expressed or implied) of any person who at the time is the holder of any Notes secured hereby, shall be conclusive and binding upon all future holders of such Notes and of Notes issued in exchange therefor or in place thereof.

(h) The Trustee may construe any of the provisions of this Agreement and of the Guaranty Agreement in so far as the same may appear to be ambiguous or inconsistent with any other of such provisions; and any construction so placed upon any provision hereof or thereof by the Trustee in good faith and in accordance with an Opinion of Counsel shall be binding upon the Company and upon all holders of the Notes.

(i) No implied covenant shall be read into this Agreement or the Guaranty Agreement against the Trustee but the duties of the Trustee to the Company and all others shall be determined solely

by the express provisions of this Agreement and of the Guaranty Agreement.

(j) Whenever in the administration of the trusts under this Agreement the Trustee shall deem it necessary or desirable that something with respect to the Company be proved or established prior to taking, suffering or omitting any action hereunder, unless other evidence thereof be herein specifically prescribed, it may be deemed to be conclusively established by an Officers' Certificate delivered to the Trustee and said Certificate shall be full warrant to the Trustee for any action taken, suffered or omitted by it in good faith in reliance thereon, but the Trustee may require such further or additional evidence as to it may seem reasonable.

(k) Whenever any action or non-action by the Trustee is conditioned on the existence and/or continuance of an Event of Default, the Trustee shall be entitled to assume that no Event of Default has occurred and is continuing unless, as Trustee, it has knowledge that an Event of Default has occurred and is continuing.

(l) Any moneys which at any time shall be paid to or received by the Trustee hereunder shall be held by the Trustee in trust until applied conformably with the provisions hereof.

(m) The Trustee shall not be a party to, or be otherwise bound by, any contract, agreement or other instrument pursuant to which Construction Costs shall arise; *provided, however*, that the Trustee may, in its unlimited discretion, become a party to any such contract or agreement solely as Trustee and not individually and that each such contract or agreement to which the Trustee shall become a party shall provide that the parties thereto (other than the Company and the Trustee) shall look solely to the trust estate and the Company for performance and shall have no rights against the Trustee individually.

SECTION 8.2. The Trustee or any successor trustee may at any time resign and be discharged of the trusts hereby created and of the duties and obligations assumed under the Guaranty Agreement by giving written notice to the Company, the Commission and to each holder of Notes, and such resignation shall take effect on the date of the appointment of a successor trustee. The Trustee or any such suc-

cessor hereafter appointed may be removed at any time by an instrument or instruments in writing signed by the holders of at least a majority in aggregate principal amount of the outstanding Notes.

SECTION 8.3. In case at any time the Trustee shall resign or be removed or shall become incapable of acting or shall be adjudged bankrupt or insolvent, or if a receiver of the Trustee or of any successor or of its property shall be appointed, or if any public officer in the exercise of his official powers shall take charge or control of the Trustee or of any successor trustee or of its property or affairs, at any time within one year after the happening of any of said events, a successor trustee hereunder and under the Guaranty Agreement may be appointed by the holders of at least a majority in aggregate principal amount of the Notes then outstanding, by an instrument or concurrent instruments in writing signed as provided in Section 11.5 hereof and delivered to such new trustee hereunder, notification thereof being given to the Company, the Commission and the predecessor trustee; *provided, however*, that until a new trustee shall be appointed hereunder and under the Guaranty Agreement by the holders of the Notes as aforesaid, the Company by instrument executed by order of its Board of Directors and duly acknowledged by its proper officers shall appoint a trustee hereunder and under the Guaranty Agreement to fill the vacancy until a new trustee hereunder and under the Guaranty Agreement shall be appointed by the holders of Notes as hereinabove authorized. Any such new trustee appointed by the Company shall immediately and without further act be superseded by a trustee hereunder and thereunder appointed by the holders of Notes as above provided.

Every trustee appointed in succession to the Trustee, or its successor, shall be a trust company or a banking corporation having an office in the Borough of Manhattan, City and State of New York, or Chicago, Illinois, in good standing and having a capital and surplus aggregating at least \$5,000,000, if there be such a trust company or banking corporation qualified, able and willing to accept the trust upon reasonable or customary terms.

If in a proper case no appointment of a successor trustee shall be made pursuant to the foregoing provisions of this Section within 60 days after the happening of any of the events set forth in the first paragraph of this Section 8.3, the holder of any Note outstanding hereunder or any retiring trustee hereunder and under the Guaranty Agree-

ment may apply to any court of competent jurisdiction to appoint a successor trustee. Said court may thereupon, after such notice, if any, as said court may deem proper and prescribe, appoint a successor trustee, and the Company agrees to give due notice of such appointment to the holders of the Notes, the Commission and the predecessor trustee.

Any successor trustee appointed shall execute, acknowledge and deliver to its predecessor trustee and also to the Company an instrument accepting the appointment hereunder and under the Guaranty Agreement, and thereupon said successor trustee without any further act, deed or conveyance shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor in trust hereunder and under the Guaranty Agreement with like effect as if originally named as trustee herein or therein; but the retiring trustee shall nevertheless on the written request of the Company or of the successor trustee and upon payment of its unpaid compensation and expenses, if any, execute, acknowledge and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in said successor trustee all the right, title and interest of the retiring trustee which it succeeds in and to the Trust Property and said estates, properties, rights, powers, trusts, duties and obligations; and the retiring trustee shall also upon like request and payment of its unpaid compensation and expenses, as aforesaid, pay over, assign and deliver to the successor trustee any money and other property subject to this Agreement. Should any deed, conveyance or instrument in writing from the Company be required by the new trustee for more fully and certainly vesting in and confirming to the new trustee said estates, properties, rights, powers, trusts, duties and obligations, any and all said deeds, conveyances and instruments in writing shall on request be executed, acknowledged and delivered by the Company.

**SECTION 8.4.** Any corporation into which the Trustee may be merged, or with which it may be consolidated, or any corporation resulting from any merger, consolidation or reorganization to which the Trustee shall be a party, or any corporation succeeding to the corporate trust business of the Trustee, shall be the successor trustee under this Agreement and under the Guaranty Agreement without the execution or filing of any paper or the performance of any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

SECTION 8.5. At any time after the Payment on Guarantee while the Consolidated Notes continue to be held by the United States of America, the Trustee, at the written request of the United States of America directed to the Trustee and upon payment to the Trustee of all amounts due and owing to it pursuant to any of the provisions of this Agreement, shall resign and be discharged of the trusts hereby created within 20 days after the receipt of such written request. Unless at the time of making the aforesaid written request the United States of America designates a successor trustee hereunder in accordance with the provisions of Section 8.3 hereof, the United States of America shall, upon the resignation of the Trustee or immediately upon the expiration of said 20-day period if the Trustee shall not theretofore have resigned, become fully vested with all of the estates, properties, rights, powers, interests, privileges and remedies of the Trustee hereunder and may thereupon exercise any thereof with like effect as if originally named as trustee herein, and the Trustee shall forthwith pay over, assign, transfer, convey and deliver to the United States of America the Trust Property (other than any moneys held by the Trustee pursuant to Section 3.5 hereof with respect to which the Trustee shall continue to act as a depositary for the benefit of the holders of the Notes outstanding hereunder as in said Section 3.5 provided) subject to the lien of this Agreement and held by the Trustee hereunder, and shall execute, acknowledge and deliver an instrument of assignment to the United States of America vesting and confirming all the right, title and interest of the Trustee in and to the Trust Property held hereunder (other than any moneys held by the Trustee pursuant to Section 3.5 hereof) and in and to said estates, properties, rights, powers, interests, privileges and remedies. In any such event the Trustee covenants and agrees that it shall also execute, acknowledge and deliver such further instruments of conveyance and further assurance and do such other acts and things as may be reasonably required for more fully and certainly vesting and confirming in the United States of America all of the right, title and interest of the Trustee in and to the Trust Property held hereunder (other than any moneys held by the Trustee pursuant to Section 3.5 hereof) and in and to said estates, properties, rights, powers, interests privileges and remedies. The Trustee may, for all purposes of this Section 8.5, recognize the United States of America as acting in and through the Commission.



SECTION 8.6. If at any time or times it shall be necessary or prudent in order to conform to any law of any state in which Trust Property shall be located, or the Trustee shall be advised by counsel that it is so necessary or prudent, or if the Commission shall so request, or if the Trustee is for any reason unwilling to take title to any Trust Property, the Trustee and the Company shall execute and deliver all instruments and agreements necessary or proper to constitute another bank or trust company or one or more persons approved by the Trustee, the Company and the Commission, either to act hereunder as co-trustee or co-trustees with respect to all or any of the Trust Property, jointly with the Trustee, or to act hereunder as separate trustee or trustees with respect to any such property. In the event the Company shall not have joined in the execution of such instruments and agreements within 15 days after the receipt of a written request from the Trustee so to do, or in case an Event of Default shall have occurred and be continuing, the Trustee may act under the foregoing provisions of this Section 8.6 without the concurrence of the Company; and the Company hereby fully empowers the Trustee so to act and appoints the Trustee its agent and attorney to act for it under the foregoing provisions of this Section 8.6 in either of such contingencies.

Every such additional trustee hereunder shall, to the extent permitted by law, be appointed and act subject to the following provisions and conditions:

(a) The Notes shall be authenticated and delivered and all powers, duties, obligations and rights conferred upon the Trustee in respect of the custody, control and management of moneys, papers or securities shall be exercised solely by Continental Illinois National Bank and Trust Company of Chicago, or its successor, as Trustee;

(b) All rights, powers, duties and obligations conferred or imposed upon the Trustees or any of them shall be conferred and imposed upon and exercised or performed by Continental Illinois National Bank and Trust Company of Chicago, or its successor, as Trustee, except to the extent that under the law of any jurisdiction in which particular act or acts are to be performed, Continental Illinois National Bank and Trust Company, or its successor, as Trustee, shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations shall be exercised and performed by such additional trustee;

(c) No power hereby given to, or which if hereby approved may be exercised by, any such additional trustee shall be exercised hereunder by such additional trustee except jointly with, or with the consent in writing of, Continental Illinois National Bank and Trust Company of Chicago, or its successor, as Trustee;

(d) No Trustee hereunder shall be personally liable by reason of any act or omission of any other Trustee hereunder; and

(e) The Company and the Trustee at any time by an instrument in writing executed by them jointly may remove any such additional trustee, and in that case, by an instrument in writing executed by them jointly, may appoint a successor to such additional trustee. In the event that the Company shall not have joined in the execution of any such instrument 15 days after the receipt of a written request so to do, or in case an Event of Default shall have occurred and be continuing, the Trustee shall have the power to remove any such additional trustee and to appoint a successor additional trustee without the concurrence of the Company; and the Company hereby empowers the Trustee to make such removal and appointment and appoints the Trustee its agent and attorney to act for it in such connection and in each such contingency. In the event that the Trustee alone shall have appointed an additional trustee as above provided, it may at any time by an instrument in writing remove any such additional trustee, the successor to any such additional trustee to be appointed by the Company and the Trustee, or by the Trustee alone, as hereinabove in this Section 8.6 provided. Any successor to such additional trustee appointed pursuant to this subparagraph (e) shall be approved by the Commission.

Subject to requirements of context and the foregoing, the term "Trustee" appearing throughout this Agreement shall be deemed to include each such additional trustee.

## ARTICLE NINE

### CONSOLIDATION, MERGER, SALE OR CONVEYANCE

SECTION 9.1. The Company covenants that it will not merge or consolidate with any other corporation or sell or convey all or substantially all of its assets to any corporation unless (i) either the Com-

pany shall be the continuing corporation, or the successor corporation (if other than the Company) shall be a solvent corporation organized and existing under the laws of the United States of America or a state or states thereof and such corporation shall expressly assume the due and punctual payment of the principal of, premium, if any, and interest on, all the Notes, and the due and punctual performance and observance of all of the covenants and conditions of this Agreement to be performed by the Company by supplemental agreement satisfactory to the Trustee and to the Commission, executed and delivered to the Trustee and to the Commission by such corporation, (ii) the Company or such successor corporation, as the case may be, shall not, immediately after such merger or consolidation, or such sale or conveyance, be in default in the performance of any such covenant or condition, and (iii) the lien of the respective mortgages securing the Pledged Bonds shall not be impaired. The term "successor corporation", for the purposes of this Article Nine and of Section 11.1 (a) hereof shall include a successor grantee or purchaser.

SECTION 9.2. In case of any such consolidation, merger, sale or conveyance and upon any such assumption by the successor corporation, such successor corporation shall succeed to and be substituted for the Company with the same effect as if it had been named herein as the party of the first part. Such successor corporation thereupon may cause to be signed, in its own name or in the name of Monon Railroad, any or all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor corporation, instead of the Company, and subject to all the terms, conditions and limitations in this Agreement prescribed, the Trustee shall authenticate and shall deliver any Notes which previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Notes which such successor corporation thereafter shall cause to be signed and delivered to the Trustee for that purpose. All such Notes shall in all respects have the same legal rank and benefit under this Agreement as the Notes theretofore or thereafter issued in accordance with the terms of this Agreement as though all of such Notes had been issued at the date of the execution hereof.

## ARTICLE TEN

## SATISFACTION AND DISCHARGE OF AGREEMENT

SECTION 10.1. If the Company shall pay in full at their several maturities the principal of and interest to and including the date of payment on all Notes, and if the Company shall also pay or cause to be paid all other sums payable hereunder by the Company, and if the Company shall not then be in default in any way hereunder, then this Agreement shall cease to be of further effect, and the Trustee, on written demand, and at the cost and expense of the Company, shall execute proper instruments acknowledging satisfaction of and discharging this Agreement and shall redeliver to the Company all of the Trust Property then held by the Trustee hereunder. The Company agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred by the Trustee in connection with this Agreement, the Trust Property or the Notes.

## ARTICLE ELEVEN

## MISCELLANEOUS

SECTION 11.1. The Company, when authorized by a resolution of its Board of Directors and, except in the case of agreements pursuant to subparagraph (a) of this Section 11.1, with the prior written consent of the Commission, and the Trustee may from time to time and at any time enter into agreements supplemental hereto for one or more of the following purposes:

(a) to evidence the succession of another corporation to the Company, or successive successions, and the assumption by the successor corporation of the covenants, agreements and obligations of the Company contained in this Agreement;

(b) to add to the covenants of the Company such further covenants, restrictions, conditions or provisions as its Board of Directors and the Trustee shall consider to be for the protection of the holders of Notes, and to make the occurrence, or the occurrence and continuance, of a default in any of such additional covenants, restrictions, conditions or provisions a default or an Event of

Default permitting the enforcement of all or any of the several remedies provided in this Agreement as herein set forth, with such period of grace, if any, and subject to such conditions as such supplemental agreement may provide;

(c) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental agreement which may be defective or inconsistent with any other provision contained herein or in any supplemental agreement; or to make such other provisions with regard to matters or questions arising under this Agreement as shall not adversely affect the interests of the holders of the Notes; and

(d) to convey, transfer, assign, mortgage or pledge any property to or with the Trustee as permitted by this Agreement or otherwise.

Any supplemental agreement authorized by the provisions of this Section 11.1 may be executed by the Company and the Trustee without the consent of the holders of any of the Notes at the time outstanding, notwithstanding any of the provisions of Section 11.2 hereof. A conformed copy of each such supplemental agreement shall be furnished to the Commission and to each holder of any Note promptly after the execution thereof.

SECTION 11.2. With the prior written consent of the Commission and the holders of not less than 66⅔% in aggregate principal amount of the Notes at the time outstanding, the Company, when authorized by a resolution of its Board of Directors, and the Trustee may from time to time and at any time enter into agreements supplemental hereto, or the Trustee may from time to time enter into agreements supplemental to the Guaranty Agreement, for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of any thereof or of any supplemental agreement or of modifying in any manner the rights of the holders of the Notes; *provided, however*, that no such supplemental agreement shall (i) extend the fixed maturity of principal of any Notes, or reduce the principal amount thereof, or reduce the rate or extend the time of payment of interest thereon, or otherwise modify the terms of payment of principal thereof and interest thereon, without the consent of the holder of each Note

so affected, or (ii) terminate or adversely and materially affect the rights of the Trustee under the Guaranty Agreement or release, subordinate or impair the lien of this Agreement on the Trust Property, or (iii) reduce the aforesaid percentage of Notes the consent of the holders of which is required for any such supplemental agreement, without the consent of the holders of all Notes then outstanding; and *provided further*, that, if the Trustee shall have given notice to the Commission terminating the Guaranty Agreement in accordance with the provisions of paragraph 6(b) thereof, the consent of the Commission shall thereafter no longer be required for the execution and delivery of any supplemental agreement amending or modifying this Agreement.

SECTION 11.3. Subject to Section 7.15 hereof, the Trustee is hereby authorized to join with the Company in the execution of any such supplemental agreement, to make any further appropriate agreements and stipulations which may be therein contained and to accept the conveyance, transfer, assignment, mortgage or pledge of any property thereunder, but the Trustee shall not be obligated to enter into any such supplemental agreement which adversely affects the Trustee's own rights, duties or immunities under this Agreement or otherwise.

SECTION 11.4. In determining whether the holders of the required aggregate principal amount of Notes have concurred in any direction, consent, notice, waiver or other instrument under this Agreement, Notes which are owned by the Company, or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company, shall, unless all Notes then outstanding are so owned, be disregarded and deemed not to be outstanding for the purpose of any such determination, except that, for the purpose of determining whether the Trustee shall be protected in relying on any such instrument, only Notes which the Trustee knows are so owned shall be so disregarded.

SECTION 11.5. (a) Any direction, consent, notice, waiver or other instrument provided by this Agreement to be signed or executed by holders of Notes may be in any number of instruments of similar tenor, and may be executed by such holders in person or by an agent or attorney appointed by an instrument in writing. The execution of any

such instrument, or of a writing appointing any such agent or attorney, or proof of the holding by any person of Notes, shall be sufficient for any purpose hereof and shall be conclusive in favor of the Trustee with regard to any action taken by the Trustee under such instrument if proved by the affidavit of a witness to such execution, or an affidavit of any bank or trust company, or by the certificate of any notary public or of any other officer authorized to take acknowledgment of deeds to be recorded in the jurisdiction where the acknowledgment may be taken, certifying that the person signing such instrument acknowledged to him the execution thereof. With respect to those Notes made and delivered on the Closing Date, the Trustee shall be entitled to rely upon any such instrument executed in writing either by an individual purporting to be an authorized officer of an Investor purchasing such Notes on the Closing Date, or by the payee thereof.

(b) Any direction, consent, notice, waiver or other instrument provided by this Agreement to be given or executed by or on behalf of the Commission shall be in writing and (except as otherwise herein provided) signed in the name and on behalf of the Commission by any member thereof or the Secretary of the Commission pursuant to order of the Commission, a true copy of which shall be attached to said writing, authorizing the execution thereof, or in any other manner which the Commission may by order, general or otherwise, provide.

SECTION 11.6. Nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any person, firm or corporation, other than the parties hereto, the holders of the Notes and the United States of America, acting by and through the Commission, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their successors, of the holders of the Notes and of the United States of America.

SECTION 11.7. Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their successors and assigns.

SECTION 11.8. All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if per-

sonally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, addressed as follows:

(a) in the case of the Company, 608 South Dearborn Street, Chicago 5, Illinois, or at such other address as may hereafter be furnished to the Trustee in writing by the Company,

(b) in the case of the Trustee, 231 South LaSalle Street, Chicago 90, Illinois, Attention: Corporate Trust Division, or at such other address as may hereafter be furnished to the Company in writing by the Trustee,

(c) in the case of the Commission, the Secretary, Interstate Commerce Commission, 12th Street and Constitution Avenue, N. W., Washington 25, D. C., or at such other address as may hereafter be furnished in writing to the Trustee by the Commission, and

(d) in the case of the holders of the Notes, the address of the original payees thereof as set forth in Annex I to the Purchase Agreements or at such other address or addresses as may hereafter be furnished to the Trustee in writing by any such payee or any other payee named in any Note.

An affidavit by any person representing or acting on behalf of the Company or the Trustee as to such delivery or mailing shall be conclusive evidence of the giving of such demand, notice or communication.

SECTION 11.9. In any case where the date of payment of interest on or principal of the Notes fixed by this Agreement shall be, in Chicago, Illinois, a Saturday, a Sunday or a legal holiday or a day on which banking institutions are authorized by law to close, then payment of interest or principal need not be made on such date but may be made on the next succeeding business day with the same force and effect as if made on the date of maturity hereunder, and no interest shall accrue for the period after such date to such succeeding business day.

SECTION 11.10. In the event that one or more of the provisions contained in this Agreement or in the Notes shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.



SECTION 11.11. This Agreement may be simultaneously executed in several counterparts each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

SECTION 11.12. This Agreement shall be deemed to have been executed on the date of the acknowledgment thereof by the officer of the Trustee who signed it on behalf of the Trustee.

SECTION 11.13. The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of Illinois or, wherever applicable, Federal law.

IN WITNESS WHEREOF, the Company and the Trustee have caused this instrument to be duly executed by their duly authorized officers and their corporate seals, duly attested, to be hereunto affixed as of the day and year first written.

MONON RAILROAD

By

*Carlick*

President

[CORPORATE SEAL]

Attest:

*John B. Goodrich*  
Secretary

CONTINENTAL ILLINOIS NATIONAL BANK  
AND TRUST COMPANY OF CHICAGO

By

*W. Furlong*

Vice President

[CORPORATE SEAL]

Attest:

*Donald H. Summers*  
Assistant Secretary

STATE OF ILLINOIS }  
COUNTY OF COOK } ss.:

I **FREDA L. EVANS**, a Notary Public duly qualified, commissioned, sworn and acting in and for said County and State, do hereby certify that **C. A. BICK**, personally known to me to be the President of **MONON RAILROAD**, an Indiana corporation, and **JOHN B. GOODRICH**, personally known to me to be the Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Secretary, they signed and delivered the said instrument as President and Secretary of said corporation, and caused the corporate seal of said corporation to be affixed thereto pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

And I do further certify that before me this 2 day of August, 1961, personally appeared **MONON RAILROAD** by **C. A. BICK** and **JOHN B. GOODRICH**, its President and Secretary, respectively, and acknowledged the execution of the foregoing instrument.

And I do further certify that on this day the foregoing instrument of writing from **MONON RAILROAD** to **CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, TRUSTEE**, was produced to me in my County by the parties and acknowledged and delivered before me by **C. A. BICK**, as President of **MONON RAILROAD**, a corporation, party thereto, to be the act and deed of said corporation by him as its President and each officer thereunto duly authorized and the seal of said corporation, as affixed to said instrument, was attested and proven before me by **JOHN B. GOODRICH** as its Secretary.

Given under my hand and seal of office this 2 day of August, 1961. My Commission expires March 25, 1965.

*Freda L. Evans*

Notary Public  
In and for the County of Cook  
State of Illinois

[NOTARIAL SEAL]

STATE OF ILLINOIS }  
COUNTY OF COOK } ss.:

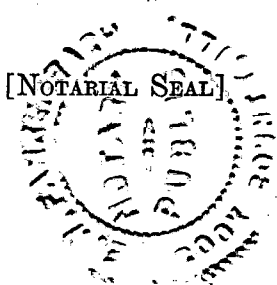
I **E. W. FAHRENBACH**, a Notary Public duly qualified, commissioned, sworn and acting in and for said County and State, do hereby certify that **C. W. FURLONG**, personally known to me to be a Vice President of CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a corporation organized under the laws of the United States of America, and **DONALD H. REMMERS**, personally known to me to be an Assistant Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Vice President and Assistant Secretary, they signed and delivered the said instrument as Vice President and Assistant Secretary of said corporation, and caused the corporate seal of said corporation to be affixed thereto pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

And I do further certify that before me this *1st* day of *August, 1961*, personally appeared CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO by **C. W. FURLONG** and **DONALD H. REMMERS**, its Vice President and Assistant Secretary, respectively, and acknowledged the execution of the foregoing instrument.

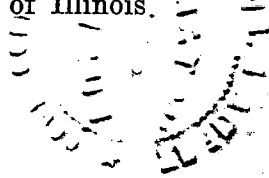
And I do further certify that on this day the foregoing instrument of writing from MONON RAILROAD to CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, TRUSTEE, was produced to me in my County by the parties and acknowledged and delivered before me by **C. W. FURLONG**, as Vice President of CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a corporation, party thereto, to be the act and deed of said corporation by him as its Vice President and each officer thereunto duly authorized and the seal of said corporation, as affixed to said instrument, was attested and proven before me by **DONALD H. REMMERS**, as its Assistant Secretary.

Given under my hand and seal of office this *1st* day of August, 1961. My Commission expires MARCH 26, 1965

[NOTARIAL SEAL]



*E. W. Fahrenbach*  
Notary Public  
In and for the County of Cook  
State of Illinois.



**Schedule I**  
**to**  
**Trust Agreement**

**FORMS OF NOTES**

**Part (a) Notes to be authenticated and delivered pursuant to Article Two.**

The forms of the Notes and of the Trustee's certificates of authentication thereon are to be substantially as follows:

(i) 4¾% Note:

**MONON RAILROAD**

**4¾% GUARANTEED TRUST NOTE**

Guaranteed by the United States of America  
under Part V of the Interstate Commerce Act, as amended.

*Dated*                      , 19                      *Due July 1, 19*

For value received, Monon Railroad (hereinafter called the Company) promises to pay to the order of

at the principal office of Continental Illinois National Bank and Trust Company of Chicago, Chicago, Illinois, or of its successor in trust under the Trust Agreement hereinafter mentioned, the principal sum of \$

on July 1, 19                      , in lawful money of the United States of America, on surrender of this Note, and to pay interest thereon at said office in like money semi-annually on July 1 and January 1 in each year commencing January 1, 1962, at the rate of 4¾% per annum from the date hereof until said principal sum shall have become due and payable and at the rate of 6% per annum thereafter until said principal sum has been paid in full.

This is one of the Notes (hereinafter called the Notes) made and delivered under and secured by the Trust Agreement dated as of July 1, 1961 (hereinafter called the Trust Agreement), by and between the Company and Continental Illinois National Bank and Trust Company of Chicago, as Trustee (hereinafter called the Trustee), to which reference is hereby made for the terms and provisions thereof and for additional rights and limitations of such rights of the maker and payee

hereof thereunder, including, but without limitation, provision for the amendment hereof and thereof, for the acceleration of the maturity hereof and for the realization on the Trust Property (as defined in the Trust Agreement) on the occurrence of certain events as therein specified.

Reference is also made to the Guaranty Agreement dated as of July 1, 1961 (hereinafter called the Guaranty Agreement), between the Trustee and the United States of America, acting by and through the Interstate Commerce Commission, a copy of which together with all exhibits thereto is on file at the aforesaid principal office of the Trustee, for the terms and conditions on which the United States of America has agreed to purchase the rights and remedies under the Trust Agreement evidenced by this Note and the other Notes outstanding thereunder upon the occurrence of certain events as therein specified. Under Article Three of the Trust Agreement, the Trustee has covenanted and agreed, and the payee and each subsequent holder of this Note does likewise covenant and agree as a condition of the acceptance hereof, that the Trustee shall duly make demand, after giving the notice specified in and otherwise in compliance with said Article Three, for the purchase by the United States of America of the rights and remedies evidenced by this Note and all other Notes then outstanding upon the Trustee's becoming entitled to make such demand in accordance with the Guaranty Agreement consequent upon certain events of default by the Company under the Trust Agreement, and that in conjunction with said demand (i) the Trustee shall authenticate and deliver to the Interstate Commerce Commission Consolidated Notes equal in aggregate principal amounts to and in substitution for this Note and all other Notes then outstanding, and (ii) upon receipt in full by the Trustee of the purchase price provided in the Guaranty Agreement, this Note shall cease to evidence any obligation of the Company whatsoever under the Trust Agreement or any right of any kind in the Trust Property but it shall evidence only the right to receive upon surrender hereof at the principal office of the Trustee, in Chicago, Illinois, a share of such purchase price equal to the unpaid balance of the principal hereof together with interest accrued thereon to the date of payment of such purchase price to the Trustee. The purchase price received by the Trustee as aforesaid is to be held by the Trustee under the Trust Agreement for payment in accordance with the foregoing to the holders of Notes upon the surrender thereof at said office.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed by the Trustee under the Trust Agreement.

MONON RAILROAD

By .....  
*President*

This is one of the 4¾% Guaranteed Trust Notes described in Article Two of the within mentioned Trust Agreement.

CONTINENTAL ILLINOIS NATIONAL BANK AND  
TRUST COMPANY OF CHICAGO,  
*as Trustee*

By .....  
*Authorized Officer*

Trustee, for the terms and conditions on which the United States of America has agreed to purchase the rights and remedies under the Trust Agreement evidenced by this Note and the other Notes outstanding thereunder upon the occurrence of certain events as therein specified. Under Article Three of the Trust Agreement, the Trustee has covenanted and agreed, and the payee and each subsequent holder of this Note does likewise covenant and agree as a condition of the acceptance hereof, that the Trustee shall duly make demand, after giving the notice specified in and otherwise in compliance with said Article Three, for the purchase by the United States of America of the rights and remedies evidenced by this Note and all other Notes then outstanding upon the Trustee's becoming entitled to make such demand in accordance with the Guaranty Agreement consequent upon certain events of default by the Company under the Trust Agreement, and that in conjunction with said demand (i) the Trustee shall authenticate and deliver to the Interstate Commerce Commission Consolidated Notes equal in aggregate principal amounts to and in substitution for this Note and all other Notes then outstanding, and (ii) upon receipt in full by the Trustee of the purchase price provided in the Guaranty Agreement, this Note shall cease to evidence any obligation of the Company whatsoever under the Trust Agreement or any right of any kind in the Trust Property but it shall evidence only the right to receive upon surrender hereof at the principal office of the Trustee, in Chicago, Illinois, a share of such purchase price equal to the unpaid balance of the principal hereof together with interest accrued thereon to the date of payment of such purchase price to the Trustee. The purchase price received by the Trustee as aforesaid is to be held by the Trustee under the Trust Agreement for payment in accordance with the foregoing to the holders of Notes upon the surrender thereof at said office.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed by the Trustee under the Trust Agreement.

MONON RAILROAD

By \_\_\_\_\_  
*President*

This is one of the 5% Guaranteed Trust Notes described in Article  
Two of the within mentioned Trust Agreement.

CONTINENTAL ILLINOIS NATIONAL BANK  
AND TRUST COMPANY OF CHICAGO,  
*as Trustee*

By \_\_\_\_\_  
*Authorized Officer*



**Part (b) Consolidated Notes to be authenticated and delivered pursuant to Article Three.**

The forms of the Consolidated Notes and of the Trustee's certificates of authentication thereon are to be substantially as follows:

(i)  $4\frac{3}{4}\%$  Consolidated Note:

**MONON RAILROAD**

**$4\frac{3}{4}\%$  Consolidated Note**

This is the  $4\frac{3}{4}\%$  Consolidated Note referred to in Article Three of the within mentioned Trust Agreement.

*Dated* \_\_\_\_\_, 19\_\_

For value received, Monon Railroad (hereinafter called the Company) promises to pay to the order of the United States of America at the principal office of Continental Illinois National Bank and Trust Company of Chicago, Chicago, Illinois, or of its successor in trust under the Trust Agreement hereinafter mentioned, the principal sum of \$ \_\_\_\_\_, in lawful money of the United States of America, in instalments as hereinbelow provided, and to pay interest on the unpaid amount of said principal sum at said office in like money semi-annually on July 1 and January 1 in each year at the rate of  $4\frac{3}{4}\%$  per annum from the date hereof until each such instalment of principal shall have become due and payable and at the rate of 6% per annum on such instalment of principal from the date it shall have become due and payable until each such instalment of principal has been paid. The principal hereof is payable in annual instalments on the dates and in the amounts set forth in the following table:

Date

Amount

This is the 4¾% Consolidated Note made and delivered under and secured by the Trust Agreement dated as of July 1, 1961 (hereinafter called the Trust Agreement), by and between the Company and Continental Illinois National Bank and Trust Company of Chicago, as Trustee (hereinafter called the Trustee), to which reference is hereby made for the terms and provisions thereof and for additional rights and limitations of such rights of the maker and payee hereof thereunder, including, but without limitation, provision for the amendment hereof and thereof, for the acceleration of the maturity hereof and for the realization on the security provided thereby on the occurrence of certain events as therein specified.

This 4¾% Consolidated Note shall not be valid or become obligatory for any purpose, or be secured by the Trust Agreement or be entitled to any lien, interest, right or benefit thereunder, until the certificate of authentication hereon shall have been signed by the Trustee under the Trust Agreement and the purchase price provided in the Guaranty Agreement dated as of July 1, 1961, between the United States of America and the Trustee shall have been paid to the Trustee in full in cash following delivery hereof to the Interstate Commerce Commission in accordance therewith. The amounts payable on this 4¾% Consolidated Note on account of any instalments of principal and interest thereon shall be reduced by the amount of payments of principal or interest in respect of such instalments to holders of 4¾% Notes outstanding under the Trust Agreement made after the date of said delivery to the Interstate Commerce Commission but prior to the date of payment of said purchase price.

MONON RAILROAD

By \_\_\_\_\_  
*President*

This is the 4¾% Consolidated Note described in Article Three of the within mentioned Trust Agreement.

CONTINENTAL ILLINOIS NATIONAL BANK AND  
TRUST COMPANY OF CHICAGO,  
*as Trustee*

By \_\_\_\_\_  
*Authorized Officer*

(ii) 5% Consolidated Note:

MONON RAILROAD  
5% Consolidated Note

This is the 5% Consolidated Note referred to in Article Three of the  
within mentioned Trust Agreement.

*Dated* , 19

For value received, Monon Railroad (hereinafter called the Company) promises to pay to the order of the United States of America at the principal office of Continental Illinois National Bank and Trust Company of Chicago, Chicago, Illinois, or of its successor in trust under the Trust Agreement hereinafter mentioned, the principal sum of \$ , in lawful money of the United States of America, in instalments as hereinbelow provided, and to pay interest on the unpaid amount of said principal sum at said office in like money semi-annually on July 1 and January 1 in each year at the rate of 5% per annum from the date hereof until each such instalment of principal shall have become due and payable and at the rate of 6% per annum on such instalment of principal from the date it shall have become due and payable until each such instalment of principal has been paid. The principal hereof is payable in annual instalments on the dates and in the amounts set forth in the following table:

Date

Amount

This is the 5% Consolidated Note made and delivered under and secured by the Trust Agreement dated as of July 1, 1961 (hereinafter called the Trust Agreement), by and between the Company and Continental Illinois National Bank and Trust Company of Chicago, as Trustee (hereinafter called the Trustee), to which reference is hereby made for the terms and provisions thereof and for additional rights and limitations of such rights of the maker and payee hereof thereunder, including, but without limitation, provision for the amendment hereof and thereof, for the acceleration of the maturity hereof and for the realization on the security provided thereby on the occurrence of certain events as therein specified.

This 5% Consolidated Note shall not be valid or become obligatory for any purpose, or be secured by the Trust Agreement or be entitled to any lien, interest, right or benefit thereunder, until the certificate of authentication hereon shall have been signed by the Trustee under the Trust Agreement and the purchase price provided in the Guaranty Agreement dated as of July 1, 1961, between the United States of America and the Trustee shall have been paid to the Trustee in full in cash following delivery hereof to the Interstate Commerce Commission in accordance therewith. The amounts payable on this 5% Consolidated Note on account of any instalments of principal and interest thereon shall be reduced by the amount of payments of principal or interest in respect of such instalments to holders of 5% Notes outstanding under the Trust Agreement made after the date of said delivery to the Interstate Commerce Commission but prior to the date of payment of said purchase price.

MONON RAILROAD

By \_\_\_\_\_  
*President*

This is the 5% Consolidated Note described in Article Three of the within mentioned Trust Agreement.

CONTINENTAL ILLINOIS NATIONAL BANK  
 AND TRUST COMPANY OF CHICAGO,  
*as Trustee*

By \_\_\_\_\_  
*Authorized Officer*

**Schedule II(a)**  
**to**  
**Trust Agreement**

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**MONON RAILROAD**  
**608 South Dearborn Street**  
**Chicago 5, Illinois**

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**PURCHASE AGREEMENT**

March 28, 1961

[NAME AND ADDRESS OF INVESTOR]

Dear Sirs:

The undersigned, Monon Railroad, an Indiana corporation (hereinafter called the Company), hereby agrees with you as follows:

SECTION 1. *The Notes.* The Company proposes to authorize and issue its 4¾% Guaranteed Trust Notes due 1962-1976 (hereinafter, together with the Consolidated Note described in the Trust Agreement hereinafter referred to, called the 4¾% Notes; the 4¾% Notes and the 5% Notes hereinafter mentioned being hereinafter called collectively the Notes) in the aggregate principal amount of \$3,500,000, to be made and delivered under and secured by a Trust Agreement dated as of July 1, 1961 (hereinafter called the Trust Agreement), between the Company and Continental Illinois National Bank and Trust Company of Chicago, as Trustee (hereinafter called the Trustee), in substantially the form of Exhibit A hereto. The 4¾% Notes will mature in the aggregate principal amount of \$100,000 per annum on the first day of July in each of the years 1962-1966, inclusive, in the aggregate principal amount of \$200,000 per annum on the first day of July in each of the years 1967-1971, inclusive, and in the aggregate principal amount of \$400,000 per annum on the first day of July in each of the years 1972-1976, inclusive, and will bear interest payable semi-annually on July 1 and January 1 of each year commencing January 1, 1962, at the rate of 4¾% per annum.

The Company also proposes to authorize and issue its 5% Guaranteed Trust Notes due 1972-1976 (hereinafter called the 5% Notes) in the aggregate principal amount of \$1,500,000 which are to be made and delivered under and secured by the Trust Agreement and will

mature and bear interest as therein provided. The 5% Notes are to be sold by the Company pursuant to Purchase Agreements dated June 15, 1961, between the Company and the Investors named in Annex I thereto.

There are to be pledged as security for the Notes under the Trust Agreement the following (hereinafter collectively called the Pledged Bonds): (1) \$332,000 aggregate principal amount of the Company's First Mortgage Contingent 4% Income Bonds, Series B, due January 1, 1983, (2) \$137,000 aggregate principal amount of the Company's First Mortgage 4% Income Bonds, Series A, due January 1, 1983 and (3) \$184,600 aggregate principal amount of the Company's Second Mortgage 4½% Income Bonds, Series A, due January 1, 2003. The Notes are to be guaranteed by the United States of America pursuant to Part V of the Interstate Commerce Act, as amended (hereinafter called the Act), on the terms and conditions set forth in a Guaranty Agreement dated as of July 1, 1961 (hereinafter called the Guaranty Agreement), to be entered into between the Trustee and the United States of America, acting by and through the Interstate Commerce Commission (hereinafter called the Commission), in form and substance satisfactory to you. Of the proceeds of the Notes, the sum of \$1,000,000 will be added to the working capital of the Company and the remaining sum of \$4,000,000 will be held by the Trustee as a trust fund and applied, as provided in the Trust Agreement, to the purchase by the Trustee of two projects (as defined in the Trust Agreement), which projects are to be leased to the Company for a term of 15 years at rentals sufficient to pay the principal of and interest on the Notes as the same become due and payable.

The terms used in this Agreement which are defined in the Trust Agreement shall have the meanings specified therein, unless the context of this Agreement otherwise requires or unless such terms are otherwise defined herein.

SECTION 2. *Representations and Warranties.* The Company represents, warrants and covenants that:

- (a) The Company has filed applications with the Commission
  - (i) for the approval of a guaranty of the Notes under Part V of the Act and (ii) for authorization by the Commission pursuant to Section 20a of the Act of the making and delivery of the Notes and the Consolidated Notes and the pledging of the Pledged Bonds,

as security for the Notes under the Trust Agreement, the approval and authorization requested by such applications as evidenced by appropriate orders of the Commission being herein called the Commission Authorizations. Copies of such applications and all amendments and supplements thereto heretofore filed by the Company have been furnished to you in the form in which such copies were filed with the Commission. Any amendments or supplements to such applications hereafter filed by the Company with the Commission shall be satisfactory in form and substance to you and to your special counsel hereinafter referred to and copies thereof in the form in which copies are filed with the Commission shall be furnished to you promptly after filing.

(b) The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Indiana; is duly authorized to do business in such other jurisdictions in which its railroad operating activities require such authorization; and is a common carrier by railroad subject to the Act.

(c) The balance sheet of the Company as of December 31, 1960, and the corresponding statement of income and surplus accounts for the year ending on said date (including, in each case, the related schedules and notes, if any), certified by a financial officer of the Company, copies of which have heretofore been delivered to you, are all correct and complete and fairly present the financial condition of the Company as of such dates and the results of operations as of such date and for such period. Such balance sheet and statement of income and surplus accounts have been prepared in conformity with principles of accounting prescribed or authorized by the Commission for Class I Railroad Companies. The Company has no knowledge of any liabilities, contingent or otherwise, of the Company as at December 31, 1960, not reflected in the above mentioned balance sheet as of said date. Since December 31, 1960, there has been no material adverse change in the condition of the Company from that set forth in said balance sheet as of December 31, 1960, except for changes by reason of transactions in the ordinary course of business or reported to you in writing.

(d) Except for the proceedings before the Commission initiated by the applications referred to in subparagraph (a) of

this Section 2 and actions, suits or proceedings referred to in the balance sheet of the Company as of December 31, 1960 delivered to you pursuant to subparagraph (c) of this Section 2, there are no actions, suits or proceedings pending, or, to the Company's knowledge, threatened against or affecting the Company or its assets, at law or in equity before or by any court or before or by any Federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, except actions, suits or proceedings which, if adversely decided, would not result in any material adverse change in the business, properties, assets, operations or condition, financial or otherwise, of the Company or materially impair the right or ability of the Company to carry on its business substantially as now conducted and would not affect the validity or enforceability of the Purchase Agreements, the Notes, the Trust Agreement, the Pledged Bonds, or the Guaranty Agreement. The Company is not, to its knowledge, in default with respect to any order, writ, injunction or decree of any court or under any order, regulation or demand of any Federal, state, municipal or other governmental agency, default under which would materially and adversely affect the business, properties, assets, operations or condition, financial or otherwise, of the Company.

(e) The Company is not a "national" of any foreign country subject to any restrictions under Executive Order No. 8389, as amended, of the President of the United States of America, nor a person subject to any restriction under the Foreign Assets Control Regulations of the United States Treasury Department, 31 C.F.R., Subtitle B, Chapter V.

(f) The execution and delivery of the Purchase Agreements and the Trust Agreement, and the making and delivery of Notes under the Trust Agreement, the pledging of the Pledged Bonds thereunder, the sale by the Company to you of the Notes as herein provided, the consummation by the Company of the other transactions contemplated hereby and thereby, the fulfillment of the terms hereof and compliance by the Company with the provisions of the Trust Agreement and of the Notes are within the corporate authority of the Company, have been or prior to the Closing Date will be, duly authorized by the Company by appropriate corporate action, will not result in a vio-



lation of its corporate charter or by-laws, do not require approval by the stockholders of the Company, and will not result in a breach of any of the terms, conditions, or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement, lease, or other agreement or instrument to which the Company is now a party (by succession or otherwise) or by which the Company is bound or may be affected, or any order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Company (except as contemplated by the Purchase Agreements and the Trust Agreement).

(g) The Company is not, and no claim has been made by anyone that the Company is, in default in the performance, observance or fulfillment of any of the terms, provisions or conditions of any instrument evidencing, or any indenture securing, funded debt.

(h) Since December 31, 1960, the business, properties, assets and operations of the Company have not been adversely affected in any substantial way as a result of any fire, explosion, accident, strike, lockout, combination of workmen or other labor disturbance, riot, atomic explosion, act of God, activity of armed forces or of the public enemy or embargo, requisition or taking of property.

(i) The Company is not party to any contract or agreement or subject to any charter or other corporate restriction which materially and adversely affects the business, properties, assets, operations or the condition, financial or otherwise, of the Company.

**SECTION 3. *Agreements with other Investors.*** Simultaneously with the execution and delivery of this Agreement, the Company is executing agreements with the other Investors named in Annex I hereto providing for the sale of the 4¾% Notes and agreements with the Investors named in Annex I to the Purchase Agreements providing for the sale of the 5% Notes, substantially similar hereto. The total aggregate principal amount of the purchases to be made pursuant to the Purchase Agreements is \$5,000,000, but the purchase of Notes by each Investor, and the delivery of such Notes by the Company, are to be, respectively, separate purchases made from the Company by such Investor and separate deliveries of Notes made by the Company to such Investor.

SECTION 4. *Purchase of the Notes.* Subject to the terms and conditions hereof, you agree to purchase, and the Company agrees to cause to be made and delivered to you, 4¾% Notes in the aggregate principal amount set forth under "Total Participation" opposite your name in Annex I hereto, maturing in the amounts and on the dates set forth opposite your name in Annex I, on such date, not later than 15 days after the Commission Authorizations are obtained, or July 17, 1961, whichever is the later, but in no event later than July 31, 1961, as shall be designated by the Company, on not less than three business days' written notice to you (hereinafter called the Closing Date). Your obligation to purchase the 4¾% Notes shall expire on July 31, 1961.

Purchase of the 4¾% Notes shall be made by you at the office of your special counsel hereinafter referred to, 15 Broad Street, New York 5, N. Y., at 10:30 A.M., New York City time, by the delivery by you to the Company on the Closing Date of a certified or official bank check in New York Clearing House funds to the order of the Company in an amount equal to the amount set forth under "Total Participation" opposite your name in Annex I hereto against delivery to you of 4¾% Notes in a like aggregate principal amount made by the Company and authenticated and delivered by the Trustee in accordance with Section 2.1 of the Trust Agreement and payable to your order or to the order of your nominee (in which latter case you shall notify the Company of the name of such nominee and the number of 4¾% Notes and the principal amounts thereof at least two days prior to the Closing Date).

SECTION 5. *Conditions to Purchase.* Your obligation to purchase the 4¾% Notes on the Closing Date hereunder is subject to the performance by the Company of all its agreements to be performed hereunder, to the accuracy of its representations herein contained and to the fulfillment prior to or concurrently with such purchase of the following further conditions:

(a) You shall have received 4¾% Notes, dated the Closing Date and complying with Section 4 hereof, in the aggregate principal amount of the purchase being made by you on the Closing Date and the Company shall have received payment for the balance of the Notes being purchased by the other Investors on such date.

(b) All representations and warranties of the Company set forth in Section 2 hereof shall be true in all respects on and as of

the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date; the Purchase Agreements (assuming due authorization, execution and delivery thereof by the respective Investors), the Trust Agreement, and the Guaranty Agreement (all in form and substance satisfactory to you) shall have been executed and delivered and shall be in full force and effect and the Company shall have performed all its agreements to be performed under the Purchase Agreements, the Trust Agreement, and the Guaranty Agreement on or prior to the Closing Date; Pledged Bonds shall have been pledged with the Trustee in not less than the principal amounts required by Section 2.1 of the Trust Agreement; no Event of Default under the Trust Agreement, and no event which with the giving of notice or lapse of time or both would become such an Event of Default (with or without the consent of the Commission), shall have occurred and be continuing; the Company shall not have taken or suffered to be taken any action which it would have been prohibited from taking or suffering to be taken and shall not have omitted, or permitted the omission of, any action which it would have been required to take or cause to be taken under the Purchase Agreements and the Trust Agreement if each of such instruments had at all times since the date hereof been a binding and effective instrument; and the Company shall have delivered to you at the closing an Officers' Certificate dated the Closing Date, to such effect (other than to the effect that the Purchase Agreements, the Trust Agreement and Guaranty Agreement are satisfactory in form and substance to you).

(c) All transactions to be taken in connection with the transactions contemplated by the Purchase Agreements including, but not limited to, all proceedings taken in connection with the authorization and execution of the Purchase Agreements, the Trust Agreement, the Guaranty Agreement and the 4¾% Notes being delivered to you on the Closing Date, and all documents incident thereto, shall be satisfactory in form and substance to you and your special counsel; and you shall have received copies of all documents which you may reasonably request in connection with said transactions and of all corporate proceedings in connection therewith in form (as to certification and otherwise) and substance satisfactory to you and to your special counsel.

(d) Out of the proceeds of the purchase made by you and the other Investors on the Closing Date the sum of \$1,000,000 shall be used to reimburse the Company in part for certain cash disbursements made from the Company's own funds for additions and betterments or other capital expenditures made by the Company subsequent to January 1, 1957, and prior to December 31, 1960, and the remaining \$4,000,000 thereof shall be used to finance additions and betterments or other capital expenditures included in the Projects; the Commission Authorizations shall have been obtained and shall be in full force and effect, and all of the terms and conditions to which such Authorizations are subject which are required to be complied with on or prior to the Closing Date shall have been complied with; and you shall have received an Officers' Certificate dated the Closing Date to such effect and to the further effect that (A) the expenditures for the additions and betterments or other capital expenditures as to which reimbursement of the Company in part for cash disbursements made therefor from the Company's own funds subsequent to January 1, 1957, and prior to December 31, 1960, will be made out of the \$1,000,000 of the proceeds of the purchases made under the Purchase Agreements (a) have not theretofore been made the basis of any loan or other financing, guaranteed pursuant to Part V of the Act, (b) have been made from the Company's own funds and not from money borrowed for such additions and betterments or other capital expenditures and (c) have been charged to the road, property or equipment investment accounts of the Company, and constitute disbursements for the acquisition or construction of property used in transportation service, chargeable in an amount not less than \$1,000,000 to the road, property or equipment investment accounts of the Company in accordance with the Uniform System of Accounts prescribed by the Commission in effect on the Closing Date. As used in this subparagraph (d) the phrase "additions and betterments or other capital expenditures" shall have the meaning assigned thereto by Section 502(b) of the Act.

(e) You shall have received from Messrs. Cravath, Swaine & Moore, who are acting as special counsel for you in connection with this transaction, a favorable opinion in form and substance satisfactory to you, to the effect that:

(i) the Company is a corporation, duly organized, existing and in good standing under the laws of the State of Indiana, and has the corporate power and authority under the laws of such State to execute, deliver and perform the terms and provisions of the Purchase Agreements, the 4¾% Notes being delivered to you on the Closing Date and the Trust Agreement and to pledge the Pledged Bonds with the Trustee under the Trust Agreement as security for the Notes as provided herein and in the Trust Agreement;

(ii) the Purchase Agreements, the Notes being delivered on the Closing Date and the Trust Agreement have been duly authorized, executed and delivered and are legal, valid and binding obligations of the Company, enforceable in accordance with their terms and such Notes are entitled to the benefit of the Trust Agreement and the Guaranty Agreement;

(iii) the Consolidated Notes have been duly authorized, executed and delivered to the Trustee by the Company and, when completed and authenticated by the Trustee pursuant to the Trust Agreement and delivered to the Commission and paid for by the United States of America pursuant to the Guaranty Agreement, will be valid and binding obligations of the Company, enforceable in accordance with their terms and entitled to the benefits of the Trust Agreement;

(iv) the Guaranty Agreement has been duly authorized, executed and delivered in accordance with Part V of the Act and is a valid and binding obligation of the United States of America;

(v) the Trust Agreement creates a valid and direct first lien on the Pledged Bonds which have been theretofore or are then being pledged thereunder in accordance with Section 2.1 thereof;

(vi) the Commission Authorizations have been obtained and are in full force and effect; all conditions to which such Authorizations are subject which are required to be complied with on or prior to the Closing Date have been complied with and failure to comply with any other condition or conditions thereto which are not required to be complied with on or prior

to the Closing Date and which have not been complied with would not affect the validity or enforceability of the Guaranty Agreement with respect to the Notes being delivered on the Closing Date. No other approval, authorization, consent or other order of any public board or body is legally required for the execution, delivery, validity, enforceability and performance of the Purchase Agreements by the Company, the Notes being delivered on the Closing Date, the Trust Agreement, and the Guaranty Agreement or, if any such is required, it has been obtained;

(vii) registration of the Notes is not required pursuant to the Securities Act of 1933, as presently in effect, and qualification of the Trust Agreement is not required under the Trust Indenture Act of 1939, as presently in effect;

(viii) the opinions of other counsel referred to in subparagraphs (f) and (g) of this Section 5 are satisfactory in form and substance to said counsel and in their opinion you are justified in relying thereon;

and as to such other matters as you may reasonably request.

(f) You shall have received from John B. Goodrich, General Solicitor for the Company, a favorable opinion in form and substance satisfactory to you and to your special counsel as to all matters specified in the subdivisions (i) through (vii), inclusive, of subparagraph (e) of this Section 5 and to the effect that:

(i) the Company is duly authorized to do business in all jurisdictions in which its railroad operating activities require such authorization and is a common carrier by railroad subject to the Act;

(ii) the Pledged Bonds constitute valid, legal and binding obligations of the Company, entitled to the benefits and security of the respective mortgages under which they are issued;

(iii) the execution and delivery of the Purchase Agreements and the Trust Agreement, the issuance of Notes under the Trust Agreement, the pledging of the Pledged Bonds as security for the Notes, the sale by the Company to you of the  $4\frac{3}{4}\%$  Notes as herein provided, the consummation by the Company of the other transactions contemplated hereby

and thereby, the fulfillment of the terms hereof and compliance by the Company with the provisions of the Trust Agreement and of the Notes are within the corporate authority of the Company, will not result in a violation of its corporate charter or by-laws, do not require approval by the stockholders of the Company, and will not result in a breach of the terms, conditions or provisions of, or constitute a default under, any indenture of mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which the Company is a party (by succession or otherwise) or by which the Company is bound or may be affected, or any order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Company (except as contemplated by the Purchase Agreements and the Trust Agreement);

(iv) the Pledged Bonds are issued under and secured by the Company's First Mortgage dated January 1, 1943, as supplemented, or the Company's Second Mortgage dated January 1, 1943, as the case may be. Said Mortgages are valid and binding upon the Company in accordance with their terms and are a first lien and second lien, respectively, on substantially all properties owned by the Company and used in its railroad operations;

(v) except for actions, suits or other proceedings referred to in the balance sheet of the Company as of December 31, 1960, delivered to you pursuant to subparagraph (c) of Section 2 hereof, there are no actions, suits or proceedings pending, or to the knowledge of such counsel threatened, against or affecting the Company or its assets at law or in equity before or by any court or before or by any Federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, except suits, actions or proceedings which, if adversely decided, would not result in any material adverse change in the business, properties, assets, operations or condition, financial or otherwise, of the Company or materially im-

pair the right or ability of the Company to carry on its business substantially as then conducted and would not affect the validity or enforceability of the Notes, the Purchase Agreements, the Trust Agreement, the Pledged Bonds or the Guaranty Agreement;

(vi) the Company is not, and to the knowledge of such counsel no claim has been made by anyone that the Company is, in default in the performance, observance or fulfillment of any of the terms, provisions or conditions of any instrument evidencing, or any indenture securing, the Company's funded debt;

(vii) the Company is not party to any contract or agreement or subject to any charter or other corporate restriction which materially and adversely affects the business, properties, assets, operations, or the condition, financial or otherwise, of the Company;

and as to such other matters as you may reasonably request.

(g) The Trustee shall have received from General Counsel for the Commission or Counsel for the Loan Section of the Commission an opinion in form and substance satisfactory to you and to your special counsel as to all matters specified in subdivision (iv) of subparagraph (e) of this Section 5 and a reproduction copy of such opinion shall have been furnished to you.

(h) The opinions referred to in subparagraphs (e) and (f) of this Section 5 shall also be addressed to the Commission and copies thereof shall be delivered to the representative of the Commission at the closing.

It is understood that the opinions of counsel required to be delivered by this Section 5, (i) may state, if such is the case, that the amounts which may become payable by the United States of America pursuant to the Guaranty Agreement which are authorized to be appropriated by Section 506(a) of the Act have not been appropriated but that the obligation of the United States of America to pay any such amounts in accordance with the terms of the Guaranty Agreement is not made contingent or conditional because appropriation for such purpose has not been made at the date of such opinions, (ii) may be stated



to be subject to the qualification that the enforceability of the rights and remedies of the Trustee and the holders of the Notes against the Company and with respect to the security provided by the Trust Agreement are subject to applicable bankruptcy or insolvency laws or other similar laws affecting the enforceability of creditors' rights, (iii) to the extent such counsel deem proper, may rely, as to all matters governed by laws other than Federal laws or the laws of the State of New York (or in the case of the General Solicitor for the Company, the laws of the State of Illinois), on opinions of local counsel and may rely upon the accuracy of matters of fact supplied by written representations of the Company and the Commission or their officers and agents; and (iv) in the case of the opinion of your special counsel delivered pursuant to subparagraph (e) of this Section 5 may state that it does not purport to pass upon the priorities of state or Federal tax liens upon the Pledged Bonds and that it expresses no conclusions as to the validity and enforceability of the Pledged Bonds, the properties of the Company subject to the mortgages under which the Pledged Bonds are issued and/or as to the lien thereon created by such mortgages and may rely, as to the due incorporation and good standing of the Company, on the opinion of the General Solicitor for the Company delivered pursuant to subparagraph (f) of this Section 5.

SECTION 6. *Financial Statements; No Default Certificate.* The Company agrees that, so long as you shall hold any of the Notes, the Company will furnish you (in duplicate if so requested):

(a) within 120 days after the end of each fiscal year of the Company, a statement of its income and surplus accounts for such year, and its balance sheet as of the end of such year, setting forth, in each case, in comparative form, the figures for the last preceding year, all in reasonable detail and certified by a financial officer of the Company;

(b) within 90 days after the end of each of the first three quarters of each fiscal year of the Company, statements of its income and surplus accounts for each of such quarters, and its balance sheet as of the end of each of such quarters certified by a financial officer of the Company;

(c) concurrently with each financial statement required by subparagraph (a) of this Section 6, a certificate signed by an

authorized officer of the Company stating that (i) a review of the activities of the Company during the preceding fiscal year of the Company has been made under his supervision with a view to determining whether the Company has kept, observed, performed and fulfilled all of its obligations under the Purchase Agreements and the Trust Agreement, (ii) the Company has kept, observed, performed and fulfilled each and every one of its covenants and conditions contained in such instruments, and (iii) on the date of such certificate no event constituting an Event of Default under the Trust Agreement, and no event which with the giving of notice or lapse of time or both would become an Event of Default (with or without the consent of the Commission), has occurred and is continuing, or stating that such an event has occurred and is continuing and specifying the nature thereof and the action which the Company proposes to take with respect thereto;

(d) promptly after the Company's receipt thereof, such detailed audit reports, if any, prepared in connection with each annual or interim audit of the accounts of the Company;

(e) promptly after the same are available, all proxy statements, financial statements and reports as the Company shall send or make available to its stockholders; and

(f) from time to time such further information regarding the financial condition or business of the Company (including, without limitation, copies of all regular and periodic reports which the Company may be required to file with the Commission, the Securities and Exchange Commission or any similar or corresponding governmental department, commission, board, bureau or agency or with any securities exchange) as you may reasonably request.

**SECTION 7. *Right to Inspect.*** The Company agrees that, after the execution of this Agreement and so long as you shall hold any of the Notes, you shall have the right at your own risk and expense to visit and inspect any of the properties of the Company and to examine the books of account of the Company and the right to discuss the affairs, finances and accounts of the Company with, and to be advised with respect thereto by, its officers, all at such reasonable times and as often as you may desire.

SECTION 8. *Expenses.* Whether or not the transactions contemplated by this Agreement and by the documents referred to herein shall be consummated, the Company agrees (a) to pay or reimburse you for any reasonable out-of-pocket expenses incurred by you in connection with the transactions contemplated by this Agreement and such other documents, including, but not limited to, expenses in respect of the fees and disbursements of your special counsel referred to in subparagraph (e) of Section 5 hereof for all services required of them in connection with the subject matter of this Agreement and of such other documents and the reasonable fees and disbursements of any local counsel that your special counsel may deem it advisable to retain, and (b) to pay or reimburse the Trustee for the payment of, all stamp and other taxes, if any, including interest and penalties, which may be payable in respect of the making and delivery by the Company of the Notes (including the authentication thereof by the Trustee), this Agreement and the Trust Agreement or the modification, amendment or alteration of the terms and provisions of any thereof, or the making and delivery by the Company and the authentication by the Trustee of the Consolidated Notes pursuant to the Trust Agreement and the transfer thereof to the United States of America pursuant to the Guaranty Agreement and will save you and all holders of any of the Notes harmless against any loss or liability whatsoever with respect to, or resultant from, any non-payment or delay in paying such taxes. The obligations of the Company under this Section 8 shall survive the payment of the Notes.

SECTION 9. *Survival of Covenants; Successors and Assigns.* All covenants, agreements, representations and warranties made by the Company in this Agreement and in certificates or other documents delivered pursuant hereto or in connection herewith (a) shall inure to and be for the exclusive benefit of the parties hereto and their successors and assigns, (b) shall be binding upon any successors and assigns of the Company, (c) shall survive the making by you of the purchase contemplated by this Agreement and the making and delivery of the 4¾% Notes to you and payment therefor, and (d) shall continue in full force and effect until all the Notes are paid in full and thereafter to the extent provided in Section 8 hereof.

SECTION 10. *Delivery of Documents to Trustee.* The Company agrees to deliver copies of all documents delivered to you in connec-

tion with the purchase to be made by you hereunder and pursuant to subparagraph (c) of Section 6 hereof to the Trustee in triplicate for its files and for delivery to the Commission (in duplicate) in accordance with paragraph 8(b) of the Guaranty Agreement.

SECTION 11. *Communications.* All communications provided for hereunder shall be in writing and, if to you, mailed or delivered, addressed to you at your address set forth in Annex I hereto, or if to the Company, mailed or delivered, addressed to the Company at 608 South Dearborn Street, Chicago 5, Illinois, or such communications shall be mailed or delivered to any party at such other address or addresses as such party shall hereafter furnish to the other party and to the Trustee in writing.

SECTION 12. *Law Governing.* This Agreement shall be construed in accordance with and governed by the laws of the State of New York.

SECTION 13. *No Oral Change.* This Agreement may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of such change is sought.

SECTION 14. *Headings.* The headings of the sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof.

If the foregoing is satisfactory to you, please execute the form of acceptance on seven of the enclosed counterparts of this Agreement, retain one of such counterparts and return the remaining six counterparts to the Company, whereupon this Agreement will become a binding agreement between you and the Company.

MONON RAILROAD

By

*President*

The foregoing Agreement is hereby  
accepted as of the date first above  
written.

[NAME OF INVESTOR]

By

## ANNEX I

<u>Name and Address of Investor</u>	<u>Total Participation</u>	<u>Dates of Maturities</u>	<u>Aggregate Principal Amount of Notes Maturing on Each Maturity Date</u>
Continental Illinois National Bank and Trust Company of Chicago, not individually but in various fiduciary capacities, 231 South LaSalle Street, Chicago 90, Illinois Attention: Alfred P. Haake, Jr., Vice President	\$1,250,000	July 1, 1967-71, inclusive July 1, 1972-76, inclusive	\$ 25,000 225,000
Wilmington Trust Company, Trustee, 10th & Market Streets, Wilmington 99, Delaware Attention: Walter D. Mertz, Vice President	1,000,000	July 1, 1967-76, inclusive	100,000
The Savings Bank of Baltimore, Charles & Baltimore Streets, Baltimore 3, Maryland Attention: Frank W. Carman, Jr., Vice President	500,000	July 1, 1962-66, inclusive	100,000
The Western and Southern Life Insurance Company, 400 Broadway, Cincinnati 1, Ohio Attention: Alfred Shepherd	500,000	July 1, 1967-76, inclusive	50,000
The Independent Life and Accident Insurance Company, P. O. Box 629, Jacksonville, Florida Attention: Thomas H. Pate, Vice President and Actuary	250,000	July 1, 1967-76, inclusive	25,000
<b>Total</b>	<u><u>\$3,500,000</u></u>		

**Schedule II(b)**  
**to**  
**Trust Agreement**

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**MONON RAILROAD**  
**608 South Dearborn Street**  
**Chicago 5, Illinois**

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**PURCHASE AGREEMENT**

June 15, 1961

[NAME AND ADDRESS OF INVESTOR]

Dear Sirs:

The undersigned, Monon Railroad, an Indiana corporation (hereinafter called the Company), hereby agrees with you as follows:

SECTION 1. *The Notes.* The Company proposes to authorize and issue its 5% Guaranteed Trust Notes due 1972-1976 (hereinafter called the 5% Notes; the 5% Notes and the 4¾% Notes hereinafter mentioned being hereinafter called collectively the Notes) in the aggregate principal amount of \$1,500,000, to be made and delivered under and secured by a Trust Agreement dated as of July 1, 1961 (hereinafter called the Trust Agreement), between the Company and Continental Illinois National Bank and Trust Company of Chicago, as Trustee (hereinafter called the Trustee), in substantially the form of Exhibit A hereto. The 5% Notes will mature in the aggregate principal amount of \$300,000 per annum on the first day of July in each of the years 1972-1976, inclusive, and will bear interest payable semi-annually on July 1 and January 1 of each year commencing January 1, 1962, at the rate of 5% per annum.

The Company also proposes to authorize and issue its 4¾% Guaranteed Trust Notes due 1962-1976 (hereinafter called the 4¾% Notes) in the aggregate principal amount of \$3,500,000 which are to be made

and delivered under and secured by the Trust Agreement and will mature and will bear interest as therein provided. The 4¾% Notes are to be sold by the Company pursuant to Purchase Agreements dated March 28, 1961 between the Company and the Investors named in Annex I thereto.

There are to be pledged as security for the Notes under the Trust Agreement the following (hereinafter collectively called the Pledged Bonds): (1) \$332,000 aggregate principal amount of the Company's First Mortgage Contingent 4% Income Bonds, Series B, due January 1, 1983, (2) \$137,000 aggregate principal amount of the Company's First Mortgage 4% Income Bonds, Series A, due January 1, 1983 and (3) \$184,600 aggregate principal amount of the Company's Second Mortgage 4½% Income Bonds, Series A, due January 1, 2003. The Notes are to be guaranteed by the United States of America pursuant to Part V of the Interstate Commerce Act, as amended (hereinafter called the Act), on the terms and conditions set forth in a Guaranty Agreement dated as of July 1, 1961 (hereinafter called the Guaranty Agreement), to be entered into between the Trustee and the United States of America, acting by and through the Interstate Commerce Commission (hereinafter called the Commission), in form and substance satisfactory to you. Of the proceeds of the Notes, the sum of \$1,000,000 will be added to the working capital of the Company and the remaining sum of \$4,000,000 will be held by the Trustee as a trust fund and applied, as provided in the Trust Agreement, to the purchase by the Trustee of two Projects (as defined in the Trust Agreement), which Projects are to be leased to the Company for a term of 15 years at rentals sufficient to pay the principal of and interest on the Notes as the same become due and payable.

The terms used in this Agreement which are defined in the Trust Agreement shall have the meanings specified therein, unless the context of this Agreement otherwise requires or unless such terms are otherwise defined herein.

SECTION 2. *Representations and Warranties.* The Company represents, warrants and covenants that:

- (a) The Company has filed applications with the Commission
  - (i) for the approval of a guaranty of the Notes under Part V of the Act and (ii) for authorization by the Commission pursuant to Section 20a of the Act of the making and delivery of the Notes

and the Consolidated Notes and the pledging of the Pledged Bonds as security for the Notes under the Trust Agreement, the approval and authorization requested by such applications as evidenced by appropriate orders of the Commission being herein called the Commission Authorizations. Copies of such applications and all amendments and supplements thereto heretofore filed by the Company have been furnished to you in the form in which such copies were filed with the Commission. Any amendments or supplements to such applications hereafter filed by the Company with the Commission shall be satisfactory in form and substance to you and to your special counsel hereinafter referred to and copies thereof in the form in which copies are filed with the Commission shall be furnished to you promptly after filing.

(b) The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Indiana; is duly authorized to do business in such other jurisdictions in which its railroad operating activities require such authorization; and is a common carrier by railroad subject to the Act.

(c) The balance sheet of the Company as of December 31, 1960, and the corresponding statement of income and surplus accounts for the year ending on said date (including, in each case, the related schedules and notes, if any), certified by a financial officer of the Company, copies of which have heretofore been delivered to you, are all correct and complete and fairly present the financial condition of the Company as of such dates and the results of operations as of such date and for such period. Such balance sheet and statement of income and surplus accounts have been prepared in conformity with principles of accounting prescribed or authorized by the Commission for Class I Railroad Companies. The Company has no knowledge of any liabilities, contingent or otherwise, of the Company as at December 31, 1960, not reflected in the above mentioned balance sheet as of said date. Since December 31, 1960, there has been no material adverse change in the condition of the Company from that set forth in said balance sheet as of December 31, 1960, except for changes by reason of transactions in the ordinary course of business or reported to you in writing.

(d) Except for the proceedings before the Commission initiated by the applications referred to in subparagraph (a) of



this Section 2 and actions, suits or proceedings referred to in the balance sheet of the Company as of December 31, 1960 delivered to you pursuant to subparagraph (c) of this Section 2, there are no actions, suits or proceedings pending, or, to the Company's knowledge, threatened against or affecting the Company or its assets, at law or in equity before or by any court or before or by any Federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, except actions, suits or proceedings which, if adversely decided, would not result in any material adverse change in the business, properties, assets, operations or condition, financial or otherwise, of the Company or materially impair the right or ability of the Company to carry on its business substantially as now conducted and would not affect the validity or enforceability of the Purchase Agreements, the Notes, the Trust Agreement, the Pledged Bonds, or the Guaranty Agreement. The Company is not, to its knowledge, in default with respect to any order, writ, injunction or decree of any court or under any order, regulation or demand of any Federal, state, municipal or other governmental agency, default under which would materially and adversely affect the business, properties, assets, operations or condition, financial or otherwise, of the Company.

(e) The Company is not a "national" of any foreign country subject to any restrictions under Executive Order No. 8389, as amended, of the President of the United States of America, nor a person subject to any restriction under the Foreign Assets Control Regulations of the United States Treasury Department, 31 C.F.R., Subtitle B, Chapter V.

(f) The execution and delivery of the Purchase Agreements and the Trust Agreement, and the making and delivery of Notes under the Trust Agreement, the pledging of the Pledged Bonds thereunder, the sale by the Company to you of the Notes as herein provided, the consummation by the Company of the other transactions contemplated hereby and thereby, the fulfillment of the terms hereof and compliance by the Company with the provisions of the Trust Agreement and of the Notes are within the corporate authority of the Company, have been or prior to the Closing Date will be, duly authorized by the Company by appropriate corporate action, will not result in a violation of its corporate charter

or by-laws, do not require approval by the stockholders of the Company, and will not result in a breach of any of the terms, conditions, or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement, lease, or other agreement or instrument to which the Company is now a party (by succession or otherwise) or by which the Company is bound or may be affected, or any order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Company (except as contemplated by the Purchase Agreements and the Trust Agreement).

(g) The Company is not, and no claim has been made by anyone that the Company is, in default in the performance, observance or fulfillment of any of the terms, provisions or conditions of any instrument evidencing, or any indenture securing, funded debt.

(h) Since December 31, 1960, the business, properties, assets and operations of the Company have not been adversely affected in any substantial way as a result of any fire, explosion, accident, strike, lockout, combination of workmen or other labor disturbance, riot, atomic explosion, act of God, activity of armed forces or of the public enemy or embargo, requisition or taking of property.

(i) The Company is not party to any contract or agreement or subject to any charter or other corporate restriction which materially and adversely affects the business, properties, assets, operations or the condition, financial or otherwise, of the Company.

SECTION 3. *Agreements with other Investors.* Simultaneously with the execution and delivery of this Agreement, the Company is executing an agreement with the other Investor named in Annex I hereto providing for the sale of the 5% Notes and agreements with the Investors named in Annex I to the Purchase Agreements providing for the sale of the 4¾% Notes, substantially similar hereto. The total aggregate principal amount of the purchases to be made pursuant to the Purchase Agreements is \$5,000,000, but the purchase of Notes by each Investor, and the delivery of such Notes by the Company, are to be, respectively, separate purchases made from the Company by such Investor and separate deliveries of Notes made by the Company to such Investor.

SECTION 4. *Purchase of the Notes.* Subject to the terms and conditions hereof, you agree to purchase, and the Company agrees to cause to be made and delivered to you, 5% Notes in the aggregate principal amount set forth under "Total Participation" opposite your name in Annex I hereto, maturing in the amounts and on the dates set forth opposite your name in Annex I, on such date, not later than 15 days after the Commission Authorizations are obtained, or July 17, 1961, whichever is the later, but in no event later than August 31, 1961, as shall be designated by the Company, on not less than three business days' written notice to you (hereinafter called the Closing Date). Your obligation to purchase the 5% Notes shall expire on August 31, 1961.

Purchase of the 5% Notes shall be made by you at the office of your special counsel hereinafter referred to, 15 Broad Street, New York 5, N. Y., at 10:30 A.M., New York City time, by the delivery by you to the Company on the Closing Date of a certified or official bank check in New York Clearing House funds to the order of the Company in an amount equal to the amount set forth under "Total Participation" opposite your name in Annex I hereto against delivery to you of 5% Notes in a like aggregate principal amount made by the Company and authenticated and delivered by the Trustee in accordance with Section 2.1 of the Trust Agreement and payable to your order or to the order of your nominee (in which latter case you shall notify the Company of the name of such nominee and the number of 5% Notes and the principal amounts thereof at least two days prior to the Closing Date).

SECTION 5. *Conditions to Purchase.* Your obligation to purchase the 5% Notes on the Closing Date hereunder is subject to the performance by the Company of all its agreements to be performed hereunder, to the accuracy of its representations herein contained and to the fulfillment prior to or concurrently with such purchase of the following further conditions:

(a) You shall have received 5% Notes, dated the Closing Date and complying with Section 4 hereof, in the aggregate principal amount of the purchase being made by you on the Closing Date and the Company shall have received payment for the balance of the Notes being purchased by the other Investors on such date.

(b) All representations and warranties of the Company set forth in Section 2 hereof shall be true in all respects on and as of the Closing Date with the same effect as though such represen-

tations and warranties had been made on and as of the Closing Date; the Purchase Agreements (assuming due authorization, execution and delivery thereof by the respective Investors), the Trust Agreement, and the Guaranty Agreement (all in form and substance satisfactory to you) shall have been executed and delivered and shall be in full force and effect and the Company shall have performed all its agreements to be performed under the Purchase Agreements, the Trust Agreement, and the Guaranty Agreement on or prior to the Closing Date; Pledged Bonds shall have been pledged with the Trustee in not less than the principal amounts required by Section 2.1 of the Trust Agreement; no Event of Default under the Trust Agreement, and no event which with the giving of notice or lapse of time or both would become such an Event of Default (with or without the consent of the Commission), shall have occurred and be continuing; the Company shall not have taken or suffered to be taken any action which it would have been prohibited from taking or suffering to be taken and shall not have omitted, or permitted the omission of, any action which it would have been required to take or cause to be taken under the Purchase Agreements and the Trust Agreement if each of such instruments had at all times since the date hereof been a binding and effective instrument; and the Company shall have delivered to you at the closing an Officers' Certificate dated the Closing Date, to such effect (other than to the effect that the Purchase Agreements, the Trust Agreement and Guaranty Agreement are satisfactory in form and substance to you).

(c) All transactions to be taken in connection with the transactions contemplated by the Purchase Agreements including, but not limited to, all proceedings taken in connection with the authorization and execution of the Purchase Agreements, the Trust Agreement, the Guaranty Agreement and the 5% Notes being delivered to you on the Closing Date, and all documents incident thereto, shall be satisfactory in form and substance to you and your special counsel; and you shall have received copies of all documents which you may reasonably request in connection with said transactions and of all corporate proceedings in connection therewith in form (as to certification and otherwise) and substance satisfactory to you and to your special counsel.

(d) Out of the proceeds of the purchase made by you and the other Investors on the Closing Date the sum of \$1,000,000 shall be used to reimburse the Company in part for certain cash disbursements made from the Company's own funds for additions and betterments or other capital expenditures made by the Company subsequent to January 1, 1957, and prior to December 31, 1960 and the remaining \$4,000,000 thereof shall be used to finance addition and betterments or other capital expenditures included in the Projects; the Commission Authorizations shall have been obtained and shall be in full force and effect, and all of the terms and conditions to which such Authorizations are subject which are required to be complied with on or prior to the Closing Date shall have been complied with; and you shall have received an Officers' Certificate dated the Closing Date to such effect and to the further effect that (A) the expenditures for the additions and betterments or other capital expenditures as to which reimbursement of the Company in part for cash disbursements made therefor from the Company's own funds subsequent to January 1, 1957, and prior to December 31, 1960 will be made out of \$1,000,000 of the proceeds of the purchases made under the Purchase Agreements (a) have not theretofore been made the basis of any loan or other financing, guaranteed pursuant to Part V of the Act, (b) have been made from the Company's own funds and not from money borrowed for such additions and betterments or other capital expenditures and (c) have been charged to the road, property or equipment investment accounts of the Company, and constitute disbursements for the acquisition or construction of property used in transportation service, chargeable in an amount not less than \$1,000,000 to the road, property or equipment investment accounts of the Company in accordance with the Uniform System of Accounts prescribed by the Commission in effect on the Closing Date, and (B) the expenditures for the additions and betterments or other capital expenditures to be made out of the Deposited Cash with respect to the Projects (a) have not theretofore been made the basis of any loan or other financing, guaranteed pursuant to Part V of the Act, (b) will be made from the Deposited Cash and not from money borrowed for such additions and betterments or other capital expenditures and (c) will constitute disbursements for the acquisition or construction of property used in transportation service and will be chargeable in an amount not less than \$4,000,000 to the road, property or equipment

investment accounts of the Company in accordance with the Uniform System of Accounts prescribed by the Commission in effect on the Closing Date. As used in this subparagraph (d) the phrase "additions and betterments or other capital expenditures" shall have the meaning assigned thereto by Section 502(b) of the Act.

(e) You shall have received from Messrs. Cravath, Swaine & Moore, who are acting as special counsel for you in connection with this transaction, a favorable opinion in form and substance satisfactory to you, to the effect that:

(i) the Company is a corporation, duly organized, existing and in good standing under the laws of the State of Indiana, and has the corporate power and authority under the laws of such State to execute, deliver and perform the terms and provisions of the Purchase Agreements, the 5% Notes being delivered to you on the Closing Date and the Trust Agreement and to pledge the Pledged Bonds with the Trustee under the Trust Agreement as security for Notes as provided herein and in the Trust Agreement;

(ii) the Purchase Agreements, the Notes being delivered on the Closing Date and the Trust Agreement have been duly authorized, executed and delivered and are legal, valid and binding obligations of the Company, enforceable in accordance with their terms and such Notes are entitled to the benefit of the Trust Agreement and the Guaranty Agreement;

(iii) the Consolidated Notes have been duly authorized, executed and delivered to the Trustee by the Company and, when completed and authenticated by the Trustee pursuant to the Trust Agreement and delivered to the Commission and paid for by the United States of America pursuant to the Guaranty Agreement, will be valid and binding obligations of the Company, enforceable in accordance with their terms and entitled to the benefits of the Trust Agreement;

(iv) the Guaranty Agreement has been duly authorized, executed and delivered in accordance with Part V of the Act and is a valid and binding obligation of the United States of America;

(v) the Trust Agreement creates a valid and direct first lien on the Pledged Bonds which have been theretofore or are

then being pledged thereunder in accordance with Section 2.1 thereof;

(vi) the Commission Authorizations have been obtained and are in full force and effect; all conditions to which such Authorizations are subject which are required to be complied with on or prior to the Closing Date have been complied with and failure to comply with any other condition or conditions thereto which are not required to be complied with on or prior to the Closing Date and which have not been complied with would not affect the validity or enforceability of the Guaranty Agreement with respect to the Notes being delivered on the Closing Date. No other approval, authorization, consent or other order of any public board or body is legally required for the execution, delivery, validity, enforceability and performance of the Purchase Agreements by the Company, the Notes being delivered on the Closing Date, the Trust Agreement, and the Guaranty Agreement or, if any such is required, it has been obtained;

(vii) registration of the Notes is not required pursuant to the Securities Act of 1933, as presently in effect, and qualification of the Trust Agreement is not required under the Trust Indenture Act of 1939, as presently in effect;

(viii) the opinions of other counsel referred to in subparagraphs (f) and (g) of this Section 5 are satisfactory in form and substance to said counsel and in their opinion you are justified in relying thereon;

and as to such other matters as you may reasonably request.

(f) You shall have received from John B. Goodrich, General Solicitor for the Company, a favorable opinion in form and substance satisfactory to you and to your special counsel as to all matters specified in the subdivisions (i) through (vii), inclusive, of subparagraph (e) of this Section 5 and to the effect that:

(i) the Company is duly authorized to do business in all jurisdictions in which its railroad operating activities require such authorization and is a common carrier by railroad subject to the Act;

(ii) the Pledged Bonds constitute valid, legal and binding obligations of the Company, entitled to the benefits and security of the respective mortgages under which they are issued;

(iii) the execution and delivery of the Purchase Agreements and the Trust Agreement, the issuance of Notes under the Trust Agreement, the pledging of the Pledged Bonds as security for the Notes, the sale by the Company to you of the 5% Notes as herein provided, the consummation by the Company of the other transactions contemplated hereby and thereby, the fulfillment of the terms hereof and compliance by the Company with the provisions of the Trust Agreement and of the Notes are within the corporate authority of the Company, will not result in a violation of its corporate charter or by-laws, do not require approval by the stockholders of the Company, and will not result in a breach of the terms, conditions or provisions of, or constitute a default under, any indenture of mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which the Company is a party (by succession or otherwise) or by which the Company is bound or may be affected, or any order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Company (except as contemplated by the Purchase Agreements and the Trust Agreement);

(iv) the Pledged Bonds are issued under and secured by the Company's First Mortgage dated January 1, 1943, as supplemented, or the Company's Second Mortgage dated January 1, 1943, as the case may be. Said Mortgages are valid and binding upon the Company in accordance with their terms and are a first lien and second lien, respectively, on substantially all properties owned by the Company and used in its railroad operations;

(v) except for actions, suits or other proceedings referred to in the balance sheet of the Company as of December 31, 1960, delivered to you pursuant to subparagraph (c) of



Section 2 hereof, there are no actions, suits or proceedings pending, or to the knowledge of such counsel threatened, against or affecting the Company or its assets at law or in equity before or by any court or before or by any Federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, except suits, actions or proceedings which, if adversely decided, would not result in any material adverse change in the business, properties, assets, operations or condition, financial or otherwise, of the Company or materially impair the right or ability of the Company to carry on its business substantially as then conducted and would not affect the validity or enforceability of the Notes, the Purchase Agreements, the Trust Agreement, the Pledged Bonds or the Guaranty Agreement;

(vi) the Company is not, and to the knowledge of such counsel no claim has been made by anyone that the Company is, in default in the performance, observance or fulfillment of any of the terms, provisions or conditions of any instrument evidencing, or any indenture securing, the Company's funded debt;

(vii) the Company is not party to any contract or agreement or subject to any charter or other corporate restriction which materially and adversely affects the business, properties, assets, operations, or the condition, financial or otherwise, of the Company;

and as to such other matters as you may reasonably request.

(g) The Trustee shall have received from General Counsel for the Commission or Counsel for the Loan Section of the Commission an opinion in form and substance satisfactory to you and to your special counsel as to all matters specified in subdivision (iv) of subparagraph (e) of this Section 5 and a reproduction copy of such opinion shall have been furnished to you.

(h) The opinions referred to in subparagraphs (e) and (f) of this Section 5 shall also be addressed to the Commission and copies thereof shall be delivered to the representative of the Commission at the closing.

It is understood that the opinions of counsel required to be delivered by this Section 5, (i) may state, if such is the case, that the amounts which may become payable by the United States of America pursuant to the Guaranty Agreement which are authorized to be appropriated by Section 506(a) of the Act have not been appropriated but that the obligation of the United States of America to pay any such amounts in accordance with the terms of the Guaranty Agreement is not made contingent or conditional because appropriation for such purpose has not been made at the date of such opinions, (ii) may be stated to be subject to the qualification that the enforceability of the rights and remedies of the Trustee and the holders of the Notes against the Company and with respect to the security provided by the Trust Agreement are subject to applicable bankruptcy or insolvency laws or other similar laws affecting the enforceability of creditors' rights, (iii) to the extent such counsel deem proper, may rely, as to all matters governed by laws other than Federal laws or the laws of the State of New York (or in the case of the General Solicitor for the Company, the laws of the State of Illinois), on opinions of local counsel and may rely upon the accuracy of matters of fact supplied by written representations of the Company and the Commission or their officers and agents; and (iv) in the case of the opinion of your special counsel delivered pursuant to subparagraph (e) of this Section 5 may state that it does not purport to pass upon the priorities of state or Federal tax liens upon the Pledged Bonds and that it expresses no conclusions as to the validity and enforceability of the Pledged Bonds, the properties of the Company subject to the mortgages under which the Pledged Bonds are issued and/or as to the lien thereon created by such mortgage, and may rely, as to the due incorporation and good standing of the Company on the opinion of the General Solicitor for the Company delivered pursuant to subparagraph (f) of this Section 5.

SECTION 6. *Financial Statements; No Default Certificate.* The Company agrees that, so long as you shall hold any of the Notes, the Company will furnish you (in duplicate if so requested):

(a) within 120 days after the end of each fiscal year of the Company, a statement of its income and surplus accounts for such year, and its balance sheet as of the end of such year, setting forth, in each case, in comparative form, the figures for the last

preceding year, all in reasonable detail and certified by a financial officer of the Company;

(b) within 90 days after the end of each of the first three quarters of each fiscal year of the Company, statements of its income and surplus accounts for each of such quarters, and its balance sheet as of the end of each of such quarters, certified by a financial officer of the Company;

(c) concurrently with each financial statement required by subparagraph (a) of this Section 6, a certificate signed by an authorized officer of the Company stating that (i) a review of the activities of the Company during the preceding fiscal year of the Company has been made under his supervision with a view to determining whether the Company has kept, observed, performed and fulfilled all of its obligations under the Purchase Agreements and the Trust Agreement, (ii) the Company has kept, observed, performed and fulfilled each and every one of its covenants and conditions contained in such instruments, and (iii) on the date of such certificate no event constituting an Event of Default under the Trust Agreement, and no event which with the giving of notice or lapse of time or both would become an Event of Default (with or without the consent of the Commission), has occurred and is continuing, or stating that such an event has occurred and is continuing and specifying the nature thereof and the action which the Company proposes to take with respect thereto;

(d) promptly after the Company's receipt thereof, such detailed audit reports, if any, prepared in connection with each annual or interim audit of the accounts of the Company;

(e) promptly after the same are available, all proxy statements, financial statements and reports as the Company shall send or make available to its stockholders; and

(f) from time to time such further information regarding the financial condition or business of the Company (including, without limitation, copies of all regular and periodic reports which the Company may be required to file with the Commission, the Securities and Exchange Commission or any similar or corresponding governmental department, commission, board, bureau or agency or with any securities exchange) as you may reasonably request.

SECTION 7. *Right to Inspect.* The Company agrees that, after the execution of this Agreement and so long as you shall hold any of the Notes, you shall have the right at your own risk and expense to visit and inspect any of the properties of the Company and to examine the books of account of the Company and the right to discuss the affairs, finances and accounts of the Company with, and to be advised with respect thereto by, its officers, all at such reasonable times and as often as you may desire.

SECTION 8. *Expenses.* Whether or not the transactions contemplated by this Agreement and by the documents referred to herein shall be consummated, the Company agrees (a) to pay or reimburse you for any reasonable out-of-pocket expenses incurred by you in connection with the transactions contemplated by this Agreement and such other documents, including, but not limited to, expenses in respect of the fees and disbursements of your special counsel referred to in subparagraph (e) of Section 5 hereof for all services required of them in connection with the subject matter of this Agreement and of such other documents and the reasonable fees and disbursements of any local counsel that your special counsel may deem it advisable to retain, and (b) to pay or reimburse the Trustee for the payment of, all stamp and other taxes, if any, including interest and penalties, which may be payable in respect of the making and delivery by the Company of the Notes (including the authentication thereof by the Trustee), this Agreement and the Trust Agreement or the modification, amendment or alteration of the terms and provisions of any thereof, or the making and delivery by the Company and the authentication by the Trustee of the Consolidated Notes pursuant to the Trust Agreement and the transfer thereof to the United States of America pursuant to the Guaranty Agreement and will save you and all holders of any of the Notes harmless against any loss or liability whatsoever with respect to, or resultant from, any non-payment or delay in paying such taxes. The obligations of the Company under this Section 8 shall survive the payment of the Notes.

SECTION 9. *Survival of Covenants; Successors and Assigns.* All covenants, agreements, representations and warranties made by the Company in this Agreement and in certificates or other documents delivered pursuant hereto or in connection herewith (a) shall inure to

and be for the exclusive benefit of the parties hereto and their successors and assigns, (b) shall be binding upon any successors and assigns of the Company, (c) shall survive the making by you of the purchase contemplated by this Agreement and the making and delivery of the 5% Notes to you and payment therefor, and (d) shall continue in full force and effect until all the Notes are paid in full and thereafter to the extent provided in Section 8 hereof.

SECTION 10. *Delivery of Documents to Trustee.* The Company agrees to deliver copies of all documents delivered to you in connection with the purchase to be made by you hereunder and pursuant to subparagraph (c) of Section 6 hereof to the Trustee in triplicate for its files and for delivery to the Commission (in duplicate) in accordance with paragraph 8(b) of the Guaranty Agreement.

SECTION 11. *Communications.* All communications provided for hereunder shall be in writing and, if to you, mailed or delivered, addressed to you at your address set forth in Annex I hereto, or if to the Company, mailed or delivered, addressed to the Company at 608 South Dearborn Street, Chicago 5, Illinois, or such communications shall be mailed or delivered to any party at such other address or addresses as such party shall hereafter furnish to the other party and to the Trustee in writing.

SECTION 12. *Law Governing.* This Agreement shall be construed in accordance with and governed by the laws of the State of New York.

SECTION 13. *No Oral Change.* This Agreement may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of such change is sought.

SECTION 14. *Headings.* The headings of the sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof.

If the foregoing is satisfactory to you, please execute the form of acceptance on seven of the enclosed counterparts of this Agreement, retain one of such counterparts and return the remaining six counter-

parts to the Company, whereupon this Agreement will become a binding agreement between you and the Company.

MONON RAILROAD

By

*President*

The foregoing Agreement is hereby  
accepted as of the date first above  
written.

[NAME OF INVESTOR]

By

## ANNEX I

<u>Name and Address of Investor</u>	<u>Total Participation</u>	<u>Dates of Maturities</u>	<u>Aggregate Principal Amount of Notes Maturing on Each Maturity Date</u>
Bankers Trust Company, as Trustee under Agreement dated December 16, 1943 with Swift & Company, 16 Wall Street, New York 15, N. Y. Attention: Everett Orr, Jr., Esq., Vice President	\$1,000,000	July 1, 1972-76, inclusive	\$200,000
Copies of all correspondence to be sent to: Paul M. Steinbrink, Assistant Treasurer, Swift & Company, 115 West Jackson Boulevard Chicago 4, Illinois			
Swift & Company Employees Benefit Association, c/o Continental Illinois National Bank and Trust Company of Chicago, 231 South LaSalle Street, Chicago 90, Illinois Attention: Earl W. Rossman, Assistant Secretary	500,000	July 1, 1972-76, inclusive	100,000
Copies of all correspondence to be sent to: Paul M. Steinbrink, Assistant Treasurer, Swift & Company, 115 West Jackson Boulevard Chicago 4, Illinois			
Total	<u>\$1,500,000</u>		

**Schedule III  
to  
Trust Agreement**

MONON RAILROAD

July , 1961

Continental Illinois National Bank  
and Trust Company of Chicago,  
Trustee under Trust Agreement  
dated as of July 1, 1961,  
with Monon Railroad,  
231 South La Salle Street,  
Chicago 90, Illinois.

Attention: Corporate Trust Division.

Dear Sirs:

Pursuant to the Trust Agreement (hereinafter called the Trust Agreement) dated as of July 1, 1961, between Monon Railroad (hereinafter called the Company) and Continental Illinois National Bank and Trust Company of Chicago, as Trustee, we enclose herewith:

(i) \$332,000 aggregate principal amount of the Company's First Mortgage, Contingent 4% Income Bonds, Series B, due January 1, 1983;

(ii) \$137,000 aggregate principal amount of the Company's First Mortgage 4% Income Bonds, Series A, due January 1, 1983; and

(iii) \$184,600 aggregate principal amount of the Company's Second Mortgage 4½% Income Bonds, Series A, due January 1, 2003,

each registered in the name of your nominee, Freer & Co., to be held by you as part of the Trust Property under the Trust Agreement.

Very truly yours,

MONON RAILROAD

By \_\_\_\_\_

*President*

Encls.